

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.6118 of 2018

ORDER:

This Civil Revision Petition is filed questioning the order, dated 10.08.2018, dismissing I.A.No.153 of 2018 in O.S.No.77 of 2011 on the file of the IV Additional District Judge's Court, Kurnool, filed by the petitioners-defendants, seeking to send certain documents to Central Forensic Laboratory at Chandigarh (in short "CFL") for secondary opinion by comparison and examination of the thumb impressions thereon.

The undisputed and uncontraverted facts are that the respondent-plaintiff filed the suit seeking declaration of title over the schedule property and for cancellation of the sale deeds executed in favour of the petitioners-defendants. On earlier occasion, the petitioners filed I.A.No.352 of 2017 to send eight documents to a Government Finger Print Expert for opinion by comparison and examination of thumb impression of the executant of the disputed suit schedule documents with the signatures on the documents mentioned in the petition schedule. The said I.A. came to be allowed by the order, dated 25.01.2018, to compare the thumb impression with Thumb Impressions Register Vol.193 & Vol.223, Registered Sale Deed, dated 20.05.2011 and Rectification Deed dated 02.06.2011, which contained the thumb impressions of vendor of the sale deed dated 13.06.1979. The documents were accordingly sent to Government Forensic Science Laboratory at Mangalagiri, and the forensic expert had submitted the report on 12.07.2018, marked as Ex.C.1 to C.5. The expert also was examined by both the counsel. In the cross-examination, the

expert opined, based on the material, that the thumb impressions on the documents Ex.C1 to C5 do not tally with the one in the suit schedule document. At that stage, the petitioners filed the present I.A.No.153 of 2018 with the following contentions:

3. "I submit that the said expert was examined by my counsel. During his deposition the expert failed to give satisfactory answers to prove that his report was accurate and correct beyond reasonable doubts. The expert stated that he has used only a magnifier to examine the thumb impressions on the documents while a many advanced scientific machinery and methods are available for the purpose. The expert further deposed that his office was not in a restricted area and he could easily be accessed by anyone and it tends to doubt the honesty of the expert and his report.

4. I submit that yet the expert has admitted that he did it all on his own without any supervision by his superiors. Moreover the expert has clearly admitted that he has not compared the thumb impressions on our documents and on the documents of the respondent in particular but he is said to have examined giving serial numbers altogether not knowing what document was compared with another. We submit that the report submitted by the expert is not determining the accurate truth and it cannot be relied on.

5. I further submit that as the Finger print expert who has been examined was not sure and certain about his own report as such there is a need of a second opinion in this regard for a fair disposal of the case as the suit schedule properties are more valuable. On enquiry we came to know that Central Forensic Science Laboratory (CFSI) at Chandigarh is one of the best government's laboratories in India. Hence, it is necessary and desirable to send the petition schedule documents for a second opinion to the Central Forensic Science Laboratory (CFSI) at Chandigarh."

Finally, the petitioners prayed to send the petition documents to CFSI at Chandigarh for further examination and opinion. In the annexure attached to the petition affidavit, eight documents are mentioned viz., 1) Registered Sale Deed

No.2148/1979, dated 13.06.1979 executed in favour of the respondent; 2) Rectification deed No.5786/1984, dated 27.08.1984 executed in favour of the respondent; 3) Registered Sale Deed No.4284/2011, dated 20.05.2011, executed in favour of petitioners; 4) Rectification Deed No.4594/2011, dated 02.06.2011; 5) Left Hand thumb impressions of Shali Bi, recorded by the JFCM in Cr.No.169/2011; 6) Thumb Impression on vakalatnama filed by Shali Bi in OS..No.45 of 2011 on the file of IV Addl. District Judge, Kurnool; 7) Thumb impression of Shali Bi on Written Statement filed by her in OS 45 of 2011 on the file of IV Addl. District Judge, Kurnool and 8) Counter foil thumb impressions recorded at the time of registration of sale deed in favour of the petitioners, which are in the custody of Sub-Registrar, Kallur, Kurnool.

A counter affidavit is filed opposing the prayer of the petitioners and specifically asserting that it is at the instance of the petitioners, the disputed thumb impressions were sent to the FSL, ignoring the choice of the respondent to send the said documents to 1) Truth Lab, Hyderabad, 2) Truth Lab, Bangalore, 3) Kasyap International Forgery Detection Bureau and 4) India's First Independent Forgery Science Laboratory, Bangalore. Merely because the forensic expert's opinion is adverse to the petitioners, they cannot seek the documents to be sent once again for re-examination. The merits of the expert opinion was also set out, which is not relevant for the purpose of disposal of the CRP. The Court below, after taking into consideration the respective submissions, dismissed the Application.

Sri V. Venkateswarulu, learned counsel for the petitioners, by specially drawing attention to the petition affidavit annexed to I.A.No.352 of 2017, would assert that the petition came to be allowed accepting the prayer of the petitioners with respect to 8 documents, however, instead of sending all the eight documents for expert opinion, the Court appeared to have sent only five documents, thus leaving three documents, thereby, the Court has committed grievous error. Once again, the petitioners filed I.A.No.153 of 2018, mentioning eight documents and, in as much as, the Court below had made an error by sending only five documents for expert opinion, allowing the Application for second time would cause no prejudice to the respondent.

On the other hand, learned counsel appearing for the respondent-plaintiff submits that merely because the expert opinion is not in favour of the petitioners, they cannot seek the second opinion. He would further submit that it is only at the instance of the petitioners, the documents were sent to the Government Forensic Science Laboratory. He would further submit that the learned Additional District Judge had taken into consideration the respective parties' arguments and passed a reasoned order and there being no error of jurisdiction or arbitrariness in the impugned order, the same does not call for interference, in exercise of the jurisdiction under Article 227 of the Constitution of India.

There is no dispute, at this point of time, that the Court, while allowing I.A.No.352 of 2017, ordered to send the documents to expert to render his opinion and report on examination of thumb impressions. As the sheet anchor argument of the learned

counsel for the petitioners is that as against eight documents, which were directed to be sent, the Court had sent only five documents, and that was the main ground on which I.A.No.157 of 2018 was filed seeking resending of the documents for reexamination by the forensic expert at Chandigarh. The affidavit filed in support of I.A.No.153 of 2017 was scrutinized by this Court. There is no mention, anywhere in the said affidavit about the reason which the learned counsel for the petitioners urges before the Court. Likewise, though the learned counsel for the petitioners asserts that he is the one who argued in I.A. before the Court below, there is no mention of any of such argument having been advanced there. Further, the prayer of the petitioners also does not state the same. Assuming for argument sake, as against the eight documents, three have not been sent to the expert opinion, at best, the petitioners could have requested the Court below to send the other three documents also for expert opinion. The petitioners had not done so. Instead, they sought to challenge the expert opinion, which was marked as Exs.C.1 to C.5 and further, challenged the expert's evidence. In other words, the petitioners desired to challenge the expert opinion recorded in the Court below, indirectly, by seeking a relief to send the documents, once again, to different forensic laboratory. It is well-settled that unless there is a compelling reason specifically raising doubts with respect to the competency of the institution / attribution of *mala fides* against the individual or the institution, who has rendered the opinion, there is no requirement of sending the documents for opinion, a second time. It may be noted that the respondent in his counter affidavit, filed in I.A.No.153 of 2018 had categorically

stated that no *mala fides* are attributed to the witness neither in the affidavit nor anywhere and even in the arguments also, the said ground was not advanced either before the Court below or this Court. The Civil Revision petition is filed raising altogether a new ground which was not argued in the Court below as per record. In those circumstances, the well-considered order of the Court below does not call for any interference. Accordingly the Civil Revision Petition is dismissed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 14.11.2018

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CHALLA KODANDA RAM, J

