

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NOS.6648, 6649 AND 6650 OF 2018

COMMON ORDER
(*Per Sri Justice Sanjay Kumar*)

The petitioners in these three civil revision petitions, filed under Article 227 of the Constitution, are the plaintiffs in O.S.No.530 of 2006 on the file of the learned III Additional District Judge, Ranga Reddy District at L.B.Nagar. They filed I.A.Nos.1036, 61 and 62 of 2018 therein, which came to be dismissed by the trial Court *vide* separate orders dated 02.11.2018. Aggrieved thereby, they are before this Court.

C.R.P.No.6648 of 2018 arises out of the dismissal of I.A.No.1036 of 2018 in O.S.No.530 of 2006 while C.R.P.No.6649 of 2018 pertains to the dismissal of I.A.No.61 of 2018 and C.R.P.No.6650 of 2018 pertains to the dismissal of I.A.No.62 of 2018 filed in the said suit.

I.A.No.1036 of 2018 in O.S.No.530 of 2006 was filed by the petitioners-plaintiffs under Section 151 CPC to permit them to examine Dr.T.S.N.Murthy, forensic-cum-document expert, as a witness. I.A.No.61 of 2018 in O.S.No.530 of 2006 was filed by them under Section 151 CPC to reopen their evidence for that purpose, while I.A.No.62 of 2018 in O.S.No.530 of 2006 was filed by them under Order 7 Rule 14(3) read with Section 151 CPC to grant them leave and to receive the expert opinion dated 23.01.2016 of Dr.T.S.N.Murthy with a comparison sheet; the disputed signatures in the sale agreement dated 10.11.2004; and the standard signatures document, viz., the registered sale deed dated 15.05.2004, bearing No.5743 of 2004. By the orders under revision, the trial Court dismissed all the I.As.

Parties shall hereinafter be referred to as arrayed in the suit.

Before advertizing to the correctness or otherwise of the said orders, it would be necessary to recount the past history of this litigation. O.S.No.530 of 2006 was filed by the plaintiffs for specific performance of the agreement of sale dated 10.11.2004. Claiming that the signature in the said agreement was not his, the first defendant filed I.A.No.737 of 2015 in the suit to send his disputed signature in the said agreement of sale for comparison with his admitted signatures. The trial Court allowed the said I.A., *vide* order dated 11.12.2015, and sent the disputed agreement of sale for comparison of the signature therein with the specimen signatures which were collected from the first defendant in Court and his signatures in documents of 2004 to be furnished by him. Thereupon, the first defendant produced a certified copy of the registered sale deed dated 15.05.2004, containing his signatures, and requested that the said document should be used for comparison with the disputed agreement. However, the first defendant himself filed Memos thereafter before the trial Court stating that as the sale deed dated 15.05.2004 was only a certified copy, the original registered partnership deed dated 06.08.2004 should be used for comparison. The trial Court did not pass any orders at that stage but endorsed that both Memos were recorded. Aggrieved by these developments, the plaintiffs filed C.R.P.No.3403 of 2016 before this Court. The said C.R.P. was disposed of by order dated 16.06.2017, wherein this Court noted that the order dated 11.12.2015 passed by the trial Court was in the nature of a consent order and thereby, the trial Court had directed the first defendant to submit documents containing his signatures. Opining that it would be difficult to disturb the said order at that stage, this Court left it open to the plaintiffs

to raise objections on the expert report, which had been already filed before the trial Court by the time of the hearing of the C.R.P.

It may be noted at this stage that the disputed agreement of sale and the document containing the admitted signatures of the first defendant were sent to M/s.Truth Labs, Hyderabad, a private agency, for comparison and report. The said agency filed its report dated 25.01.2016 even before disposal of C.R.P.No.3403 of 2016. While so, the first defendant filed I.A.No.583 of 2017 in the suit to reopen his evidence to enable him to examine the expert from M/s.Truth Labs, Hyderabad. He also filed I.A.No.584 of 2017 to issue summons to the said expert so that he could depose on his report dated 25.01.2016. At that stage, the plaintiffs filed I.A.No.642 of 2017 under Order 11 Rule 14 CPC to direct the first defendant in the suit to produce the original registered sale deed dated 15.05.2004, bearing Document No.5743 of 2004, so that it could be sent to the Government Forensic Science Laboratory, Habsiguda, Hyderabad, for analysis. They also filed I.A.No.643 of 2017 under Section 45 of the Indian Evidence Act, 1872 (*for brevity*, 'the Act of 1872') to send the disputed agreement of sale for comparison of the signatures therein with the admitted signatures of the first defendant in the original sale deed dated 15.05.2004 to the Government Forensic Science Laboratory, Habsiguda, Hyderabad.

It may be noted that this original sale deed, production of which was sought by way of I.A.No.642 of 2017 filed by the plaintiffs, was the very same document of which a certified copy had been filed earlier.

The trial Court allowed I.A.Nos.583 and 584 of 2017 filed by the first defendant and dismissed I.A.Nos.642 and 643 of 2017 filed by the plaintiffs. Aggrieved thereby, the plaintiffs filed C.R.P.No.5128, 5129, 5197

and 5199 of 2017 before this Court. By common order dated 17.11.2017, this Court dismissed all the four CRPs.

Be it noted that at that stage the learned counsel for the plaintiffs specifically argued before this Court that it would be open to the plaintiffs to seek expert examination of the disputed signatures afresh with the admitted signatures in the original sale deed, but this Court was not persuaded to agree. Pointing out that the plaintiffs allowed a consent order to be passed in I.A.No.737 of 2015 filed by the first defendant, this Court observed that permitting the plaintiffs to seek examination afresh of the disputed signatures through another agency with another document, would result in two reports being placed before the trial Court and in the event the reports contradicted each other, it would only put the Court in a quandary as to which report should be accepted. This Court further pointed out that though there was no hard and fast rule that expert examination could not be resorted to a second time, it would have to be in compelling circumstances and after recording a finding that the first expert examination is unreliable or unworthy of acceptance. This Court categorically held that without securing such a finding, a litigant cannot be permitted to seek multiple expert examinations of disputed signatures till he secures a favourable report. Referring to the Division Bench judgment of this Court in M.RAMESH BABU V/ s. M.SREEDHAR¹, wherein it was held that there is no bar to the Court taking the opinion of a second expert without setting aside the earlier report but it would not be desirable to refer to a second expert without there being valid reasons, this Court pointed out that it was observed by the Division Bench itself that there should be special circumstances and that the Court must record

¹ 2009 (4) ALT 780 (D.B.)

its reasons for sending the document to a second expert. Applying the *ratio* laid down by the Division Bench, this Court observed that except for asserting that M/s.Truth Labs, Hyderabad, was a private agency, the plaintiffs had no other grounds to seek examination of the disputed signatures afresh. This Court also took note of the fact that they were yet to raise their objections to the report submitted by M/s.Truth Labs, Hyderabad, and cross-examine its expert who was summoned to depose before the trial Court and held that it was not an appropriate case to permit the plaintiffs to seek examination of the disputed signatures by a second expert at that stage.

This Court was also apprised by the learned counsel for the plaintiffs that Dr.T.S.N.Murthy, Retired Joint Director, A.P. Forensic Science Laboratory, had furnished his opinion as to the certification of M/s.Truth Labs, Hyderabad, and this Court observed that this aspect of the matter could also be put to the expert from M/s.Truth Labs, who would be examined before the trial Court, and it was for the plaintiffs to demonstrate as to how the report furnished by the said agency was unworthy of credibility. It was on the strength of this reasoning that all the four civil revision petitions filed by the plaintiffs were dismissed.

The aforestated common order dated 17.11.2017 passed by this Court dismissing the four civil revision petitions was the subject matter of consideration before the Supreme Court in Special Leave to Appeal (C) Nos.1119-1122 of 2018, but by order dated 22.01.2018, the Supreme Court dismissed the said Special Leave Petitions.

The plaintiffs thereupon filed Tr.O.P.No.77 of 2018 before the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, seeking transfer of O.S.No.530 of 2006 from the file of the learned

III Additional District Judge, Ranga Reddy District at L.B.Nagar, to any other Court having jurisdiction. By order dated 12.07.2018, the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, dismissed the Tr.O.P. Aggrieved thereby, the plaintiffs filed C.R.P.No.4281 of 2018 before this Court. The said C.R.P. was dismissed by this Court, *vide* order dated 28.09.2018. This Court observed therein that the trajectory of events clearly demonstrated that the plaintiffs were not keen on proceeding with the suit on the strength of the report submitted by M/s.Truth Labs, Hyderabad, and having exhausted all their remedies in relation thereto, they had filed the petition seeking transfer of the suit. This Court found no merit in the allegation of the plaintiffs that the Presiding Officer had dismissed all their I.As. because of bias, as such dismissal was warranted on merits and stood confirmed right up to the Supreme Court. This Court therefore found that the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, had rightly dismissed the Tr.O.P. and accordingly dismissed the C.R.P.

This is the background of the present civil revision petitions.

I.A.No.1036 of 2018 was filed by the plaintiffs baldly stating that as the defendants were contending that the suit agreement of sale was forged, they had consulted Dr.T.S.N.Murthy, forensic-cum-document expert, and obtained his opinion which was filed into Court and he had to be examined to prove his opinion. This was the pleading which was the basis for their prayer to permit them to examine Dr.T.S.N.Murthy, forensic-cum-document expert. The trial Court took note of the fact that the plaintiffs had already obtained a favourable report from Dr.T.S.N.Murthy, forensic-cum-document expert, and now wanted to examine him in relation thereto. Opining that the parties could not take

law into their own hands by sending the document to an expert of their own choice, the trial Court held that the proposed witness could not be examined. The said I.A. was accordingly dismissed.

In so far as I.A.No.61 of 2018 is concerned, the plaintiffs stated in the affidavit filed in support thereof that they had submitted certain documents to Dr.T.S.N.Murthy, the forensic-cum-document expert, for examination and opinion and that his original expert opinion dated 23.01.2016 with the comparison sheet along with the sale agreement dated 10.11.2004 and the sale deed dated 15.05.2004 had to be marked as exhibits. They therefore prayed for reopening of their evidence for that purpose. I.A.No.62 of 2018 was filed by them seeking leave to file the said documents and praying that the trial Court should receive them.

The trial Court first considered I.A.No.62 of 2018 and held that as the plaintiffs themselves took independent steps, by approaching a private expert of their choice and having obtained a report they wanted to introduce the same into the Court, it was not open to them to take such steps without taking the aid of the Court and dismissed the I.A.

It appears that the trial Court earlier allowed I.A.No.1037 of 2018 filed by the plaintiffs to reopen the evidence to enable them to cross-examine D.W.3, the expert from M/s.Truth Labs, Hyderabad, and the trial Court therefore opined that the question of reopening the suit again did not arise. However, as I.A.Nos.62 and 1036 of 2018 had already been dismissed by it, the trial Court held that I.A.No.61 of 2018 also deserved to be dismissed and accordingly did so.

Heard Sri V.V.Raghavan, learned counsel for the plaintiffs, and Sri O.Manohar Reddy, learned counsel for the first defendant.

Sri V.V.Raghavan, learned counsel, would again rely upon M.RAMESH BABU¹ in support of his contention that law does not bar examination of disputed signatures by a second expert. However, this decision was already referred to and considered in the earlier round of litigation in C.R.P.Nos.5128 of 2017 and batch. It is therefore of no avail to the plaintiffs at this stage.

Learned counsel also placed reliance on S.NEELAKANTAM V/ s. MAHARUDRAIAH SWAMY². However, this judgment is inapplicable to the cases on hand as the fact situation therein was entirely different. Therein, the first expert who was asked to render an opinion expressed helplessness and it was in these circumstances that the document had to be sent to a second expert for comparison.

Learned counsel also placed reliance on the recent decision of a learned Judge of this Court in KATI MAHESWARA RAO V/ s. UPPATI LALITHA³. In that case, an application under Section 45 of the Act of 1872 was allowed and an expert opinion was furnished to the trial Court. The party thereafter obtained a second expert opinion and filed an application before the trial Court to receive the same. Aggrieved by the dismissal of the said application, the party came before this Court. Relying upon M.RAMESH BABU¹, the learned Judge held that there was no bar to take the opinion of a second expert without setting aside the earlier report and opined that the opinion and report of the second expert could be examined by summoning him to give evidence. The learned Judge also held that the fact that the party had not obtained permission from the Court before sending the document for a second expert opinion could not be held against him as Section 45 of the Act of 1872 did not lay down any

² 2010 (5) ALD 161

³ 2018 (2) ALT 594

such procedure. On the strength of this judgment Sri V.V.Raghavan, learned counsel, would contend that the fact situation being identical, in terms of the plaintiffs not seeking permission from the trial Court before approaching Dr.T.S.N.Murthy, forensic-cum-document expert, the same cannot be held against them and that this Court is bound to follow the law laid down in the aforestated decision in KATI MAHESWARA RAO³ or at least refer the matter to a Division Bench if it is disinclined to agree with the same.

This argument however loses sight of the distinguishing fact that there is a chequered past preceding the present litigation. The historical background, set out *supra*, clearly demonstrates that the plaintiffs attempted to have the disputed agreement of sale sent to a second expert for comparison with the sale deed dated 15.05.2004, by way of I.A.Nos.642 and 643 of 2017 filed in the suit. Their attempt came to naught when the trial Court dismissed the I.As. and the same was confirmed by this Court and thereafter, by the Supreme Court. Having failed to achieve their purpose in sending the disputed document for an expert opinion a second time by way of direct means, it is not open to the plaintiffs to seek to achieve the very same purpose by indirect means. This is the distinguishing factor between the cases on hand and KATI MAHESWARA RAO³. Allowing the plaintiffs to have the benefit of the second expert report secured by them independently from another private agent, which is stated to be in their favour, would be nothing short of permitting them to abuse the process of law. It would practically have the effect of setting at naught the common order passed by this Court in C.R.P.Nos.5129 and 5199 of 2017, which was confirmed by the Supreme Court. The plaintiffs clearly lacked *bonafides* when they went about

securing a favourable report from Dr.T.S.N.Murthy, forensic-cum-document expert, behind the back of the Court surreptitiously. The decision in KATI MAHESWARA RAO³ therefore does not come to their aid on the facts obtaining. In effect, the trial Court was fully justified in disallowing the plea of the plaintiffs to get over the earlier orders passed against them by such clandestine means.

The civil revision petitions are utterly devoid of merit and are accordingly dismissed with costs of Rs.5,000/- in each of the civil revision petitions, payable to the Chief Justice's Relief Fund. Pending miscellaneous petitions, if any, shall also stand dismissed.

SANJAY KUMAR,J

15th DECEMBER, 2018

PGS

