

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP Nos.6156 & 5884 of 2017

ORDER ::

The revision petitioner is the 3rd defendant in the suit being OS No.32 of 2009 on the file of X Addl. District Judge at Narsapur, West Godavari District. The petitioner filed two interlocutory applications being IA Nos.476 and 477 of 2017, the former one; to issue summons to the Secretary, Co-operative Society, Gorintada, to produce settlement deed dated 19-02-2008 into the Court and the latter one; to send the said settlement deed to handwriting expert along with Exs.A5 and A6 for comparison of thumb impressions for getting opinion thereon. By the impugned order, both the applications are dismissed. Hence these revision petitions.

2. Since the parties and the subject matter being same in revision petitions they are heard together. For the sake of convenience, parties hereinafter will be referred to as they are arrayed in the suit.

3. Plaintiff filed the suit for specific performance of the agreement of sale dated 02-10-2004 said to have been

executed by 1st defendant and his wife, who are now no more in this world, on the ground that the 1st defendant and his wife offered to sell the suit property, to meet their necessities and to discharge the debts incurred towards the medical expenses of 1st defendant's wife, who suffered with paralysis and for getting repairs to the tractor, which was maintained by the husband of the 3rd defendant. The plaintiff offered highest amount of Rs.1,20,000/-and in the presence of the mediators, 1st defendant and his wife agreed to sell the suit property and received an amount of Rs.60,000/- and on receipt of the same, 1st defendant and his wife jointly executed the suit agreement of sale dated 02-10-2004 in favour of the plaintiff. After the death of the wife of the 1st defendant, the 1st defendant approached the plaintiff along with elders and insisted to pay the balance sale consideration as he has to discharge the debts incurred by him in connection with the medical expenses of his wife and accordingly plaintiff paid a further amount of Rs.50,000/- to the 1st defendant and the same was

endorsed on the reverse of the suit agreement of sale dated 02-10-2004 and the 1st defendant also agreed to execute the sale deed in respect of the suit property in favour of the plaintiff within one month after receiving the balance sale consideration of Rs.10,000/-, by ejecting the tenant from the suit property and deliver of possession thereof to plaintiff. It is stated that the plaintiff made repeated demands personally and through mediators, the defendants including defendants 2 and 3 who are daughters of 1st defendant have been postponing the execution of the sale deed though the plaintiff expressed his willingness to perform his part of the contract. Since the notices issued by the plaintiff to the defendants returned served on defendants 2 and 3, and no steps were taken by them, the plaintiff filed the above suit.

4. The 3rd defendant (revision petitioner in these CRPs) filed a written statement wherein she stated that the suit property is self acquired property of his father-1st defendant and mother Gogulamma, and during their lifetime, they

executed settlement deed dated 19-02-2008 in her favour as she was looking after them during their old age. That 2nd defendant who is her sister, bore grudge against her and created the suit unregistered agreement of sale in the name of plaintiff in the year 2004 and she wants to knock away the suit property through the plaintiff. That there was no necessity to her parents to sell the suit property as she was looking after 1st defendant (father) and Gogulamma (mother) including providing medical assistance during their old age.

5. It is stated that when the matter was coming up for arguments, as per the directions of this Court passed in CRP No.3681 of 2015, dated 12-07-2017, the matter was reopened and the plaintiff adduced further evidence and marked Exs.A-5 and A-6. Thereafter, the 3rd defendant filed the above applications, which were dismissed by the impugned order.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 3, who are plaintiff and 2nd defendant and the suit.

7. The allegation of the revision petitioner-3rd defendant is that the 2nd defendant, her sister, in collusion with the plaintiff created and forged the suit agreement of sale dated 02-10-2004 in favour of the plaintiff and the thumb impressions therein do not belong to her parents (D-1 and his wife Gogulamma).

8. It is to be seen that though the 3rd defendant did not take such a plea in a written statement that the suit agreement of sale is forged, she is also claiming title to the suit property by virtue of settlement deed dated 19-02-2008 said to have been executed by her parents (D-1 and Gogulamma) in the year 2008. According to the plaintiff the suit agreement of sale is said to have been executed by D-1 and his wife Gogulamma in the year 2004. The genuinity or otherwise; either of the suit agreement of sale which was executed in the 2004 or that of the settlement deed which

was executed in the year 2008 are to be tested by the trial Court during the course of adjudication of the matter. For the present, as far these interlocutory applications are concerned, calling for the settlement deed dated 19-02-2008 and to send the same along with Exs.A-5 and A-6 to handwriting expert for an opinion as regards the thumb impressions appearing on the documents will only assist the Court more so, in the light of the allegation of the 3rd defendant that the suit agreement of sale is forged and the thumb impressions thereon are not of her parents. As observed by this Court in an identical fact situation in the case of **THUMU SRIKANTH v. AKULA BABU (2010 (5) ALD 795)** it is held that though under Section 73 of the Evidence Act, the Court has power to undertake comparison of disputed signature/thumb impression with the admitted signature/thumb impression, such an exercise may not meet the requirements, and in a given case exercise under Section 45 of the Evidence Act has to be permitted to be undertaken to have a comprehensive adjudication of

question in controversy between the parties, particularly in view of the fact that the opinion of the expert obtained under Section 45 of the Evidence Act is a mere opinion and it is ultimately the Court that has to appreciate the acceptability or otherwise of the expert opinion.

9. It is to be seen that in this case the facts issue is in relation to the genuinity or otherwise of the suit agreement of sale and thumb impressions affixed thereon and it cannot be said that the Court itself can come to a just conclusion by comparing the disputed thumb impressions and the admitted ones on Exs.A-5 and A-6. In the circumstances, and to meet the ends of justice, the impugned orders are set aside and the interlocutory applications are allowed. The suit is of the year 2009 and therefore, it is expedient that the trial Court dispose of the suit, in accordance with law, within a period of four months from the date of receipt of a copy of this order.

10. In the result the civil revision petitions are allowed to the extent indicated above on payment of costs of

Rs.10,000/- payable to the plaintiff-first respondent herein within four weeks from the date of the receipt of the copy of this order, otherwise the CRP stands dismissed. Miscellaneous petitions, if any pending, shall stand disposed of.

A. RAJASHEKER REDDY, J

Dated: 31-01-2018
NRG



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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