

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ CIVIL REVISION PETITION Nos.5550 & 5561 of 2017

% Dated 01.03.2018

Kati Maheswara Rao

... PETITIONER

VERSUS

\$ Uppati Lalitha and others.

...RESPONDENTS

! Counsel for the Petitioner: SRI V.V.Raghavan

^ Counsel for the Respondents: Sri Yallabanda Ramatirtha

> HEAD NOTE:

? Cases referred

¹ AIR 1976 Madras 66

² 2013 (5) ALD 394

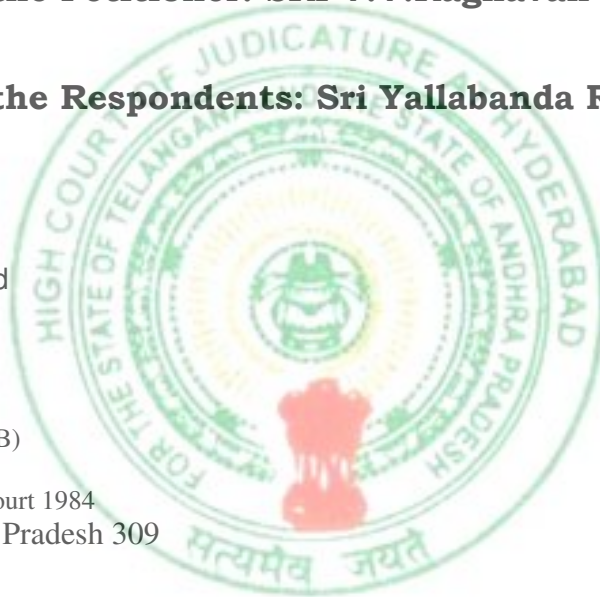
³ 1986 (2) ALT 461

⁴ 2009 (5) ALD 187 (DB)

⁵ 2011 (2) ALD 572

⁶ AIR 1995 Supreme Court 1984

⁷ AIR 1973 Andhra Pradesh 309



The Court made the following:

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**CIVIL REVISION PETITION Nos.5550 & 5561 OF 2017****COMMON ORDER:**

Since the issue involved in both the petitions and parties are one and the same, they are being heard together and disposed of by way of this Common Order.

2. CRP No.5550 of 2017

This Civil Revision Petition is filed by the petitioner/plaintiff against order dated 11.09.2017 in I.A.No.605 of 2016 in O.S.No.200 of 2005 wherein and whereby the Court below dismissed the application filed by the petitioner/plaintiff under Order 7 Rule 14 (3) CPC to condone the delay for filing document No.1 i.e., the handwriting expert C.S.R.Murthy opinion and enclosed signatures marked Exs.A1-12, S1-S6 and the red enclosed signatures similarly marked Q1, Q6, S1, S11 and D1 and D2 are marked as Exhibits on behalf of the petitioner/plaintiff.

3. CRP No.5561 of 2017

This Civil Revision Petition is filed by the petitioner/plaintiff against order dated 11.09.2017 in I.A.No.604 of 2016 in O.S.No.200 of 2005 wherein and whereby the Court below dismissed the application filed by the petitioner under Order 16 Rules 1 to 4 CPC to issue summons to the witness Sri C.S.R.Murthy, Hand Writing Expert

(Diploma of the American Board of Forensic Examiners) to give evidence on his behalf.

4. Heard Sri V.V.Raghavan, learned counsel for the petitioner and Sri Y.Ramathirtha, learned counsel for the respondents 1 and 2.

5. Learned counsel for the petitioner vehemently contends that there is no need to send only original documents for obtaining opinion of the handwriting expert as there is every likelihood of the original being lost. In support of his contention, he relied on the judgment reported in **Doraiswamy Gounder v. Paravammal**¹. He submits that no permission is required under Section 45 of Evidence Act, 1872 (for short 'the Act') or Order 26 Rule 10-A of CPC for sending the documents for opinion of handwriting expert. He further submits that petitioner obtained certified copies of the admitted signatures of the respondents/defendants, which are available on record in the suit before the Court below and sought opinion from the handwriting expert. He submits that the Court can issue summons to the handwriting expert and also receive the report submitted by him and that there is nothing wrong in allowing the same. In support of his contention, he relied on the judgment of this Court in **Rytu Depot, Draksharama, East Godavari District v. Sri Rajyalakshmi Agencies,**

¹ AIR 1976 Madras 66

Ramachandrapuram². He submits that the Court below, without considering the said aspects, erroneously dismissed both the applications filed by the petitioner.

6. On the other hand, learned counsel appearing for the respondents while reiterating the averments in the counter affidavit, submits that when the Court below had already sent the disputed documents for expert opinion and the expert gave opinion, no steps were taken by the petitioner against the said report filed by the first expert. He submits that the petitioner did not obtain prior permission from the Court for sending the certified copies of documents to the handwriting expert and that no notice was issued to the respondents before sending the documents to the handwriting expert. He submits that original documents were not sent for expert opinion and only certified copy of Ex.A1 was sent to the private handwriting expert and that the petitioner is not entitled to examine the private handwriting expert.

7. Before considering the rival contentions of both the parties, it is necessary to extract relevant provisions of Evidence Act.

“45. Opinion of Experts: When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.”

² 2013 (5) ALD 394

As per the aforesaid provision, there is no bar for the Court at any stage of the case to obtain opinion of the expert for the purpose of arriving at a decision on the basis of the opinions of experts. The opinion must be based on a person having special skill or knowledge in the relevant field. However, whether such evidence could be admitted or how much weight should be given thereto, lies within the domain of the court and that the said opinion can be interpreted by the Court like any other evidence.

“73. Comparison of signature, writing or seal with others admitted or proved:- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. 1[This section applies also, with any necessary modifications, to finger-impressions.]

As per the aforesaid provision, the Court is entitled to make comparison of disputed and admitted signature for just conclusion but as a rule of prudence expert opinion can be obtained and also that the court can instruct a party to submit his writing or signature, enabling court to compare and decide a case. This section also permits the Court to compare the signature.

Order VII Rule 14 (3) of CPC reads as follows:

“(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

Order XVI : Summoning and Attendance of Witnesses:-

1. List of witnesses and summons of Witnesses:

(1).....

(2).....

(3) The Court may, for reasons to be recorded, permit a party to call whether by summoning through Court or otherwise, any witnesses, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.”

Though learned counsel for petitioners also relied on Order XXVI Rule 10-A for pressing the relief, the same cannot be acceded to as, in **Dommeti Venkanna, In Re³**, this Court held as follows:

“3.....

The words, ‘scientific investigation’ used in Order 26 Rule 10A would not, in the light sense of the expression, apply to opinion evidence made relevant under Section 45 of the Evidence Act. The hand-writing expert opinion with which we are quite familiar in the Courts always supports mutually contradictory claims about the genuineness of the disputed signatures. I am, therefore, of the opinion that the opinion of an hand-writing expert cannot be called as involving any scientific investigation and falling within Order 26, Rule 10A of the Civil Procedure Code. The question of adopting the procedure of Order 26 Rule 9 in obtaining such an expert opinion cannot, therefore, arise.”

8. A coherent reading of the aforesaid provisions makes it abundantly clear that it is the discretion of the Court to send any disputed document to an Handwriting Expert for his opinion so as to ascertain whether the signature or the thumb impression is forged one or not. In the instant case,

³ 1986 (2) ALT 461

no doubt, the Court below has sent the disputed documents for expert opinion on 04.01.2008 in I.A.No.1077 of 2007 and obtained opinion that the disputed signature of D1, D2 are not the same with the related documents. But Section 45 of the Act does not provide any procedure for obtaining expert opinion. Normally, Courts on the application of the parties, send the documents for expert opinion, but in the present case, as already held supra, respondents/defendants filed application under Section 45 of Evidence Act and same was allowed and opinions were sought from the expert, which was received by the Court below. The Court below dismissed the present application filed by petitioner for receiving the documents on this ground also. It is pertinent to note here that there is no prohibition under law for obtaining second expert opinion if either of the parties to the suit intends so. In **M.Ramesh Babu v. M.Sreedhar**⁴, the Hon'ble Division Bench of this Court held as follows:

“42. Therefore, a combined reading of Rule 10-A and sub-rule (3) of Rule 10 and sub-rule (2) of rule 12 gives an impression that the report of the Commissioner is part of the record of the Court and if the Court is not satisfied with the proceedings and report of the Commissioner it may direct such further enquiry which include the issuing of second commission for the same purpose.

45. Sub-rule (2) of Rule 12 also provides that where the Court is dissatisfied with the proceedings and report of the Commissioner, it may direct such further inquiry as it shall think fit. Therefore, further enquiry has been contemplated under both the provisions. It means, further enquiry is authorized by law, if the court is dissatisfied with the report

⁴ 2009 (5) ALD 187 (DB)

or the proceedings of the Commissioner. There is nothing in law, which prohibits issue of second commission, moreover where it appears that the court would have advantage of considering the evidence or report of both the experts.

49. There are basic differences in the methodology adopted by the experts. Even an expert may commit a mistake. When a mistake is committed by an expert, the other side advocate, while cross-examining the expert, may point out those errors. But, sometimes, it may not be possible for the advocates to elicit those errors in the cross-examination due to lack of expertise knowledge. In such circumstances, great injustice may be done to the parties. Even the Court may not be in a position to detect those errors committed by an expert. It appears that another expert who has special knowledge in the subject may be in a position to point out those errors. Even, in any unfortunate situation, if an expert is won over by the party, then such a situation could be saved by obtaining opinion of another expert. Then the court will have the advantage of looking into the reports of both the experts in such a situation.”

In view of the aforesaid decision of the Division Bench, there is no bar to take the opinion of a second expert without setting aside the earlier report. In the instant case, as already observed supra, though the disputed documents were sent by the Court to an expert and obtained report, the opinion and report of the second handwriting expert can be examined by summoning him to give evidence and by receiving the report submitted by him. As such, the contention of the learned counsel for the respondents/defendants that when once the Court obtained handwriting expert opinion, there is no need to obtain another expert's opinion, cannot be accepted. Moreover, the Court below also observed in the impugned order that there is no bar for obtaining second opinion from the authorized handwriting expert.

9. Be that as it may, the application of the petitioner was also dismissed on the ground that the petitioner neither obtained any permission from the Court before sending the certified copy of Ex.A1 nor issued any notice to the respondents/defendants. But a fair reading of Section 45 of the Act goes to show that there is no such provision to obtain permission of the Court or notice to be given to the other side. However, it is the duty of the court to ascertain the truth or otherwise of the opinion submitted by the second handwriting expert at the time of deciding the main suit and not at the stage of trial. Therefore, the contention of the learned counsel for the respondents that the petitioner has to obtain prior permission from the Court to send the documents for second opinion, cannot be accepted.

10. The Court below dismissed the application of the petitioner also on the ground that only certified copy of Ex.A1 was sent to handwriting expert but not the original. Learned counsel for the petitioner submits that there is no need to send only the original document and certified copy/photographic copies would serve the purpose. He submits that the petitioner obtained certified copy of Ex.A1 i.e., admitted signatures of the respondents/defendants and send the same for obtaining opinion of handwriting expert.

In **Doraiswamy Gounder v. Paravammal (supra)**, the High Court of Madras held as follows:

“7. The question for consideration is whether the document could be parted with in favour of a fingerprint expert, whether a private or a Government one. The decisions of Ramamurti J and Ramanujam, J. which have been referred to are clear on the point that it is unsafe to part with the documents in the course of the trial. The learned judges did not make any distinction between private and Government experts. It is true that Raghavan, J. has permitted the handing over of the documents to Government expert. I do not know the circumstances under which the learned Judge felt it possible to part with the document in favour of the Government expert. The consideration that weighs in not allowing the document to be handled by any other person is only for the purpose of ensuring the safety of the document or prevent its being tampered with. It will have to be considered if there will be no undue risk if the document is parted with in favour of a Government expert. As far as private experts are concerned, the decisions are uniform. As far as Government expert is concerned unless it is not possible for the expert to examine the genuineness or otherwise of the endorsements without taking it from the custody of the Court, it would not be desirable to allow the document to be handled by him outside the Court. I think that in the circumstances, it is proper and desirable to have the endorsement examined by the Government expert, but will do it in the presence of a Court official in the District Munsif Court, Salem. If he feels it necessary, he may be permitted to take photographic copies of the document.”

11. In **Rytu Depot, Draksharama, East Godavari District v. Sri Rajyalakshmi Agencies, Ramachandrapuram (supra)**, this Court observed that when very signature on document is denied, such document, though a carbon copy can be looked into by sending same for opinion of expert.

12. In **Jalagadugula Eswara Rao v. Davala Surya Rao**⁵, learned Single Judge of this Court held that when a document is said to be forged and when a party has specifically denied the signature or the thumb impression on that particular

⁵ 2011 (2) ALD 572

document, such party should certainly have an opportunity to send the document to the Handwriting Expert for comparison of the disputed signatures or the thumb impression with the admitted signatures or the thumb impressions.

In view of the aforesaid decisions, not only the original document can be sent for expert examination but photographic copies may also send for examination of handwriting expert. In this case, admittedly, petitioner taken certified copy of Ex.A1 and send the same for obtaining the opinion of handwriting expert. Even in spite of availability of expert evidence, the Court can also compare the signatures under Section 73 of Indian Evidence Act and opinion of expert is only a guiding factor and it is for the Court below to examine the entire evidence on record including the evidence of the handwriting expert and come to a just conclusion. As such, dismissal of the application filed by the petitioner by the Court below on this ground by the Court below is erroneous.

13. Order 16 Rules 1(A) of CPC envisages for production of witnesses without summons. This provision was added to Rule 1 of Order 16 which says that subject to the provisions of sub-Rule (3) of Rule 1, any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents. In **Lalitha**

J.Rai v. Aithappa Rai⁶, the Hon'ble Supreme Court held as follows:

“Civil P.C (5 of 1908), O.16 R.1(A)-List of witnesses-Failure to file within prescribed time-Plaintiff subsequently filing list, stating that he was under bona fide impression that he had already filed list along with documents and mistake was discovered when they were getting ready for trial-Trial was yet to begin-Trial Court must be considered to have committed illegality in refusing to receive list for summoning witnesses.”

In **Gopala Krishna Murthy v. B.Ramachander Rao**⁷, learned Single Judge of this Court held as follows:

“9. A reading of the above authorities leads me to lay down the following propositions.

- (1) Under Order 16, Rule 1, Civil P. C. it is the right of the party at any stage of the suit to make an application to the Court seeking that summons be issued to a witness either to give evidence or to produce documents.
- (2) The Court is not entitled to refuse such an application on the ground that it might cause delay in the trial of the suit on the adjourned date of the suit.
- (3) If the summons is not served by the adjourned date of the suit the party who filed the application to issue the summons would take the risk.
- (4) If an application for an adjournment is made at the instance of the party who applied under Order 16, Rule 1, Civil P. C. it is for the Court to consider whether or not an adjournment should be granted.
- (5) The Court may not refuse to order an application under Order 16, Rule 1, Civil P. C. on the ground that the evidence, if produced, may not be of any help to the applicant.
- (6) Though Order 16, Rule 1, Civil P. C. does not in terms impose any restrictions on the Court, the Court in the exercise of its inherent jurisdiction may refuse to issue summons in an application made under O. 16, R. 1, Civil P. C. in those cases where it is satisfied that the application filed was not bona fide or was vexatious or granting the application would result in an abuse of process of the Court. Except in these three above contingencies the application must almost always be ordered.”

⁶ AIR 1995 Supreme Court 1984

⁷ AIR 1973 Andhra Pradesh 309

In view of above facts and circumstances, the trial Court should have considered to summon the witness/handwriting expert intended to be examined by the petitioner. In this case, petitioner is not seeking permission of the Court below to send the documents for expert opinion under Section 45 of Evidence Act. The petitioner being plaintiff, only wants to strengthen his case since the burden lies on him by leading evidence of expert, as such, he sought summons to be issued to the expert and also wants rely on the report prepared by a private handwriting expert and that it is always open for the trial Court to weigh the evidence of both experts, while deciding the suit finally. In view of the same, I do not see any reason for not allowing the application to adopt such course. There is no reason why expert cannot be asked to give opinion during the course of evidence by producing admitted and disputed signatures before him. Whether the private handwriting expert is qualified or not, whether his report can be taken into consideration or not, all these aspects can be elicited during the cross-examination by the respondents/defendants. Moreover, the Courts can also take into consideration about the said aspects while deciding the suit and that it is for the courts to appreciate evidence on either side. In view of above facts and circumstances, the impugned orders in both the applications, are liable to be set aside and accordingly set aside and applications are allowed.

Accordingly, both the Civil Revision Petitions are allowed. Since the suit is of the year 2005, the Court below is directed to dispose of the suit as soon as possible preferably within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

01-03-2018
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition Nos.5550 & 5561 OF 2017



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