

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6379 of 2017

ORDER:

Heard.

Assailing the order dated 18.09.2017, passed in I.A.No.192 of 2017 in O.S.No.80 of 2009, by Junior Civil Judge, Prathipadu, wherein, the application filed by the petitioners/defendants, under Section 45 of the Evidence Act, 1872, seeking to send original registered gift deed, dated 11.04.1991 to Handwriting Expert's Opinion for comparison of the signatures of defendant Nos.1 and 2 and the deceased father of defendant No.1 with the admitted signatures was dismissed, the present revision came to be filed.

The affidavit filed in support of the petition would show a suit came to be filed seeking injunction. Pending suit, an application came to be filed under Section 45 of the Act, by the first defendant stating that plaintiff filed the above suit against the defendants for an injunction against D1, his son, his father, alleging that the defendants who are son and father, executed a registered gift deed in favour of the vendor of the plaintiff, with regard to plaint schedule property and on behalf of the second defendant, the first defendant executed and signed the said gift deed dated 11.04.1991. The claim of the defendant is that he never executed any registered gift deed in favour of the vendor of the plaintiff at any point of time and that the alleged gift deed is a forged one. Hence an application came to be filed disputing signatures on the registered gift

deed dated 11.04.1991 along with admitted signatures so as to determine whether there is any forgery. A counter came to be filed by the respondent/ plaintiff disputing the averments made in the affidavit filed in support of the same. The main ground taken by the plaintiff is that the defendants have filed the petition at a belated stage after lapse of several years and only to drag on the proceedings. Considering the rival submissions made, the trial Court rejected the application. Challenging the same, the present CRP came to be filed.

Learned counsel for the petitioner submits that though the suit is of the year 2009, but the application came to be filed only when the matter has come up for cross examination of PW1. Therefore, it is pleaded that there is no delay on the part of the defendants, in making such an application. Learned counsel for the petitioner also comments on the findings of the trial Court pointing that no useful purpose would be served in sending document to the Court. According to him what has been requested before the Court below was for comparing the thumb impression, which is there on the gift deed, by taking the thumb impression of the first defendant. According to him, the findings of the trial Court are incorrect, since the request was not only for taking signatures, but also for taking thumb impression, for the purpose of comparison.

A perusal of the written statement filed before the trial Court in the suit would show that the defendant has taken the said plea, wherein it is stated that the alleged gift deed dated 11.04.1991, is a forged and fabricated document. Therefore, it cannot be said that the said

defendant has come forward with the said plea for the first time in the I.A. Since the case is still at the stage of cross examination of PW1, though it is of the year 2009 and as the entire dispute between the parties revolves round the alleged gift deed dated 11.04.1991, this Court is of the opinion that it is a fit case where the document can be sent for hand writing expert along with admitted signatures and also the thumb impressions of the petitioner/ defendants.

It is needless to mention that pursuant to receiving of an opinion of the hand writing expert, the trial Court shall take necessary steps, at the earliest, in accordance with law.

Accordingly, the Civil Revision Petition is disposed of. No costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

23.02.2018
vhb

C. PRAVEEN KUMAR, J