

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOs.6644 AND 6652 OF 2017

COMMON ORDER

The petitioner in these two revision petitions, filed under Article 227 of the Constitution, is the plaintiff in O.S.No.2285 of 2009 on the file of the learned IX Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. He filed I.A.No.1198 of 2017 therein under Section 45 of the Indian Evidence Act, 1872 (*for brevity*, 'the Act of 1872') to send the original registered sale deed dated 30.08.1985, bearing Document No.11059 of 1985, for examination of the thumb impression therein of the first defendant with his admitted thumb impression in the registered General Power of Attorney dated 28.11.2000, bearing Document No.9577 of 2000. He also filed I.A.No.1276 of 2017 in the said suit under Order 16 Rules 6 and 7 CPC to summon the Sub-Registrar, Hyderabad (East), Hayathnagar, Ranga Reddy District, and to produce the thumb impression registers/books of the registered sale deed dated 30.08.1985, bearing Document No.11059 of 1985, and the registered agreement of sale-cum-general power of attorney dated 28.11.2000, bearing Document No.9577 of 2000. By the common order dated 14.09.2017, the trial Court dismissed both the I.As. Aggrieved thereby, he is before this Court.

Heard Sri R.Dheeraj Singh, learned counsel for the petitioner/plaintiff in both the CRPs, and Sri Kotha Janardhan Reddy, learned counsel for the first respondent/first defendant. The second and third respondents, the second and third defendants in the suit, are shown as not necessary parties to these revisions.

O.S.No.2285 of 2009 was filed by the petitioner/plaintiff seeking a declaration that he was the owner of the suit plot bearing No.210/A, admeasuring 200 square yards, in Sy.Nos.91 and 92 of Balaji Nagar, Bagh Hayatnagar, Ranga Reddy District; to direct the respondents/defendants to deliver and hand over vacant possession thereof to him; to declare the registered agreement of sale-cum-general power of attorney dated 28.11.2000, bearing Document No.9577 of 2000, as null and void and to cancel the same; to grant a perpetual injunction restraining the respondents/defendants from changing the nature of the suit property or alienating the same; and for costs.

This suit was filed in November, 2009 and the respondents/defendants filed their written statement in July, 2010. Therein, they categorically denied the genuineness of the sale deed dated 30.08.1985, bearing Document No.11059 of 1985, relied upon by the petitioner/plaintiff.

Upon perusal of the subject sale deed dated 30.08.1985, the trial Court found that there were no thumb impressions in it as it had been signed by the executant on all pages. At this stage, it may be noted that the trial Court lost sight of the fact that the thumb impression of the executant was obtained on the reverse of the first page by the registration authorities and was available for comparison. Further, the trial Court took into account the fact that the petitioner/plaintiff had kept quiet for eight years after the filing of the suit and had moved the subject applications seeking examination and comparison only at the stage of arguments. Relying on case law, the trial Court observed that as the first respondent/first defendant in the suit had denied execution of the

sale deed in his written statement and as the petitioner/plaintiff was well aware of this stand as it was put forth by the respondents/defendants even in the earlier suit filed by the petitioner/plaintiff for a perpetual injunction, the trial Court concluded that the petitioner/plaintiff had not been sufficiently diligent in seeking comparison of the disputed thumb impression. As eight years had elapsed since the filing of the suit apart from the fact that the trial had also concluded by the time the subject applications were filed and the case was at the stage of arguments, the trial Court held that there were no merits in the subject applications and accordingly dismissed them on the ground of delay.

Sri R.Dheeraj Singh, learned counsel, does not deny the fact that the petitioner/plaintiff was put on notice of the stand of the respondents/defendants in so far as the subject document was concerned in the prior suit filed by the petitioner/plaintiff for a perpetual injunction. He also does not dispute that this denial of the document was once again reiterated by the respondents/defendants in their written statement, filed as long back as in July, 2010. Further, he has no explanation to offer as to why the petitioner/plaintiff did not choose to at least set out a reason in the affidavit filed in support of the subject I.As for not seeking such comparison for all these eight years after the institution of the suit.

Sri Kotha Janardhan Reddy, learned counsel, would support the common orders under revision pointing out that the case law relied upon by the trial Court in **DHATLA LAKSHMIPATHI RAJU**

V/s. P.VENKATA RAMANA¹ puts it beyond doubt that a laid-back approach on the part of the parties or their counsel in filing belated applications would not only cause prejudice to the other side but also lead to abnormal delay in disposal of cases.

Reliance placed by Sri R.Dheeraj Singh, learned counsel, on **JANACHAITANYA HOUSING LTD. V/s. DIVYA FINANCIERS**² is also of no avail to him as a Division Bench of this Court pointed out therein that though no time could be fixed for filing applications under Section 45 of the Act of 1872 to send disputed signatures/writings to an expert for comparison and opinion, the same should be left open to the Court to exercise its discretion as the exigencies demand, depending upon the facts and circumstances of each case. It was therefore left to the Court to decide the course of action to be taken upon such an application on the individual facts of the case before it.

In the case on hand, the incontrovertible fact remains that the petitioner/plaintiff took no steps for all of eight years since the institution of the suit though he was well aware of the stand of the respondents/defendants in so far as the subject document was concerned, owing to the same stand being taken by them in the earlier suit filed by him for a perpetual injunction. Even otherwise, once the respondents/defendants affirmed and reiterated the same stand in their written statement filed in the present suit as long back as in July, 2010, he had no cause to remain silent for all these years. Having done so, it is too late in the day for him to now seek such relief at a stage when the case is coming up for arguments.

¹ 2017 (4) ALT 386

² 2008 (3) ALT 409 (D.B.)

This Court therefore finds no grounds to interfere with the common order under revision, whereby the trial Court held against the petitioner/plaintiff on the ground of delay.

The civil revision petitions are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

2nd FEBRUARY, 2018
PGS

