

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.NOS.563 AND 619 OF 2019

COMMON ORDER

These Revisions arise between the same parties out of the same suit and so they are being disposed of by a common order.

Petitioner in both these Revisions is the defendant in the suit.

The respondent filed the said suit against the petitioner in the year 2011 for specific performance of an agreement of sale, allegedly executed by the petitioner in his favour on 19.03.2008.

Written statement was filed by the petitioner stating that the agreement of sale is a forged document and that the petitioner never executed suit agreement of sale. It was alleged that the document was executed on two stamp papers, but the ages of the ink of both the stamps appear to be new and the respondent appears to have secured the stamps with ante date few days before making the agreement and the ages of the ink on the stamps are not three years old, but very new.

During the course of trial of the suit, petitioner filed I.A.No.369 of 2011 under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act'), to send the suit agreement of sale with admitted signature to

handwriting expert to (a) ascertain the age of the ink and (b) for comparison of handwriting.

The said application was partly allowed on 21-07-2011 and the document was directed to be sent with admitted signatures to A. P. Forensic Science Laboratory at Hyderabad. No relief was granted with regard to ascertainment of the age of the ink.

Thereafter, the expert report was received and was marked as Ex.C-1; arguments were also heard; and matter was reserved for judgment on 4.10.2018.

Petitioner then filed I.A.No.40 of 2019 to reopen the evidence and to send the suit agreement of sale under Section 45 of the Act; and I.A.No.41 of 2019 to send the document to Nutron Activation Analysis, BABC, Mumbai, for giving opinion in respect of the age of the ink that appears on the documents, with regard to the ink used by the attestors, executants and stamp vendors on the document. These applications were filed on 21.01.2019.

In these applications it was contended that it is essential to ascertain the age of the ink used for putting the signature of P.W.2 and Marti Suryanarayana and the ink used to put the petitioner's signature therein. It is

contended that determination of the age of the ink of the writing is essential to establish fraud played by the respondent; that there is a judgment rendered by this court in *NAMINENI AUDI SESHIAIAH v. NUMBURU MOHAN RAO*,¹ that there is technology now available with Nutron Activation Analysis, BABC, Mumbai, a Central Government organization to determine the age of the ink also; and, therefore, the document be sent to the said institution and opinion be obtained as regards the age of the ink used by the attestors, executants and stamp vendor on the document.

Counter affidavit was filed by the respondent opposing the said application. It was pointed out that there are no pleadings by the petitioner that the respondent created the agreement of sale by obtaining the signature of the attestors, just before filing of the suit and the purpose of filing of the application is only to delay the proceedings. It was also contended that the issue cannot be re-agitated once it has been rejected earlier by the court.

By common order dated 08-02-2019, the court below dismissed both the applications. It referred to the contentions of the parties and stated that earlier petitioner had filed I.A.No.369 of 2011 under Section 45 of the Act praying the court to send the suit agreement of sale with admitted signatures to the handwriting expert to ascertain the age of the ink of sale deeds and

¹ 2018(6) ALD 751

also for comparison of handwriting; that the said application was allowed on 21-07-2011 partly only with regard to comparison of the handwriting / signatures thereon; the said order was not challenged by the petitioner with regard to denial of relief regarding the ascertaining the age of the ink on the document; there is no mention in the written statement that the signatures of attestors were obtained on the suit agreement of sale just before filing of the suit; and the second application is not maintainable and is hit by principles of *res judicata*.

Challenging the same, these Revisions are filed.

Though counsel for the petitioner sought to place reliance on the judgment in NAMINENI AUDI SESHIAIAH (1 supra) and contends that at the time when the said application in I.A.No.369 of 2011 was filed, there was no technology available to ascertain the age of the ink, but now that the said technology is available, petitioner be given an opportunity to seek such expert opinion regarding the age of the ink, the fact remains that petitioner did not challenge the order dated 21-07-2011 in I.A.No.369 of 2011 refusing to have the age of the ink determined by the expert.

The said order attained finality and so the said issue relating to ascertaining the age of the ink, cannot be reopened at this point of time,

when arguments have already been heard and the judgment was reserved by the said court.

I, therefore, do not find any error of jurisdiction in the orders passed by the court below refusing to reopen the suit and permitting the petitioner to send the suit agreement of sale to Nutron Activation Analysis, BABC, Mumbai.

Revisions are accordingly dismissed.

Interlocutory applications pending, if any, shall stand closed. No costs.

M.S. RAMACHANDRA RAO,J

DATE:14—03—2019

AVS