

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1790 OF 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.6 aggrieved by the order dated 08.07.2019 passed in I.A.No.989 of 2019 in O.S.No.660 of 2009 by the V Additional Junior Civil Judge, Kukatpally at Prashanti Nagar, whereby the petition filed by the revision petitioner under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') read with Section 151 of CPC to send the disputed signature of defendant Nos.1 to 4 on Ex.A1 to the handwriting expert to compare the same with the admitted signatures of defendant Nos.1 to 4 on Exs.B47, B49, B50 and B53, was dismissed.

2. Heard learned counsel for the revision petitioner/defendant No.6, learned counsel for respondent Nos.1 to 10/plaintiffs and perused the record.

3. Learned counsel for the revision petitioner/defendant No.6 would submit that to come to a just conclusion, the Court below ought to have sent the disputed signatures of defendant Nos.1 to 4 on Ex.A1 to the handwriting expert to compare the same with their admitted signatures on Exs.B47, B49, B50 and B53 but the Court below did not undertake such exercise. The findings recorded by the Court below in the impugned order are erroneous and ultimately prayed to set aside the order under challenge and allow the subject Interlocutory Application as

prayed for. In support of his contention, learned counsel relied upon the decision reported in *Thiruvengadam Pillai vs. Navaneethammal and another*¹.

4. On the other hand, learned counsel for respondent Nos.1 to 10/plaintiffs would contend that the Court below has power to undertake comparison of the disputed signatures with the admitted signatures in terms of Section 73 of the Act. Moreover, the subject Interlocutory Application is filed belatedly. During the life time of defendant Nos.1 to 3, they never disputed their signatures on Ex.A.1. The Court below is justified in passing the impugned order and ultimately prayed to dismiss the revision petition.

5. In view of the submissions made by both sides, the point for determination is,

“Whether the impugned order dated 08.07.2019 passed in I.A.No.989 of 2019 in O.S.No.660 of 2009 by the V Additional Junior Civil Judge, Kukatpally at Prashanti Nagar, is liable to set aside or not?”

6. As per the material placed on record, the subject suit was filed in the year 2009 and the subject Interlocutory Application was filed after the examination of D.W.1 in chief. Admittedly, defendant Nos.1 to 3, during their life time, did not choose to file any written statement in the subject original suit. It is brought to the notice of this Court by the learned counsel for the

¹ (2008)4 SCC 530

respondent Nos.1 to 10/plaintiffs that defendant No.4 was alive and she did not file any written statement in the subject suit. The revision petitioner/defendant No.6 being the legal representative of defendant No.3 has chosen to file the present Interlocutory Application belatedly.

7. The Hon'ble Apex Court in *Thiruvengadam Pillai's* case (supra) observed as follows:-

“Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the Court is in a position to identify the characteristics of fingerprints, the Court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the Court should not hazard a guess by a casual perusal.”

It is apt to refer to Section 73 of the Act, which reads as under:-

“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.”

Section 73 of the Act allows the Court to compare the admitted signatures with the disputed signatures. Furthermore, in the aforesaid decision, the Hon'ble Apex Court held that where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the Court is in a position to identify the characteristics of the fingerprints, the Court may

record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the Court is not supposed to undertake such an exercise.

8. The Court below while dealing with the subject Ex.A1 in question, had relied upon the decision reported in *Md.Tajuddin vs. Md. Abdul Rahman and others*², and is of the view that at first instance, it ought to have compared the disputed signature on Ex.A1 with the admitted signatures available on Ex.B47, Ex.B49, Ex.B50 and Ex.B53 to reach to just conclusion. It is also pointed out that earlier the respondent/defendant No.7 filed two applications to reject the plaint and they were dismissed and it was not necessary to send Ex.A1 for examination by expert. Further, it was of the view that subject Interlocutory Application was filed only to protract the litigation. In view of the submissions made and the material placed on record, the stand taken by the Court below cannot be faulted. Furthermore, the subject application was filed belatedly. Under these circumstances, there is nothing to take a different view. There is no perversity in the impugned order. This revision petition is devoid of any merit and is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 23.12.2019
ssp

² 2009(1) ALD 573