

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.6842 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, challenging the order, dated 12.09.2018 passed in I.A.No.634 of 2018 in O.S.No.180 of 2010, by the learned VIII Additional Senior Civil Judge, Ranga Reddy district at L.B.Nagar, whereby, the petition filed by the petitioner/plaintiff under Section 45 of the Evidence Act, requesting to send the disputed thumb impressions on the registered sale deed (Doc.No.514 of 1996), dated 03.02.1996 along with thumb impressions of the petitioner/plaintiff to be obtained in the open Court, to the handwriting Expert for comparison and opinion, was dismissed.

2. Heard the learned counsel for the petitioner/plaintiff, the learned counsel for the respondents/defendants and perused the record.

3. The learned counsel for the petitioner/plaintiff would contend that the impugned order passed by the Court below is erroneous. The registered sale deed dated 03.02.1996 contains thumb impressions on the 2nd page, which require comparison by the Expert. The 1st respondent/1st defendant, by impersonating the petitioner/ plaintiff and forging her signatures, executed sale deed (Doc.No.514 of 1996), dt.03.02.1996 purporting to have been executed by the petitioner/plaintiff and got it registered. In fact, the petitioner/plaintiff never signed on the sale deed and

conveyed the suit schedule property to the 1st respondent/1st defendant. Her earlier applications for the same relief were allowed by the Court below and when the said registered sale deed along with the admitted signatures of the petitioner/plaintiff were sent to different Experts for comparison and opinion, the Experts asked for contemporaneous signatures of the petitioner/plaintiff and ultimately prayed to set aside the impugned order by allowing the revision petition as prayed for.

4. On the other hand, learned counsel for the respondents/defendants would contend that the Court below is justified in dismissing the subject Interlocutory Application. There is no illegality or perversity in the order under challenge 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 12.09.2018 passed in I.A.No.634 of 2018 in O.S.No.180 of 2010 by the learned VIII Addl. Senior Civil Judge, Ranga Reddy district at L.B.Nagar, is sustainable?”

6. POINT: Admittedly, the subject Interlocutory Application was filed after commencement of the trial in the suit. Earlier the petitioner had filed two applications for similar relief which were allowed by the Court below. However, when the registered sale deed (Doc.No.514 of 1996), dt.03.02.1996 and the signatures of the petitioner/plaintiff were sent to different Experts for comparison and report, the Experts returned the same and asked for contemporaneous signatures of the plaintiff. Since

those signatures were not available, both the applications are not materialized.

7. Now in the subject Interlocutory Application, the petitioner/plaintiff sought to send the registered sale deed (Doc.No.514 of 1996), dt.03.02.1996 along with her admitted thumb impressions to be taken in the open Court, to the handwriting Expert for comparison with the disputed thumb impressions available on the aforesaid sale deed and opinion. The Court below dismissed the said application vide impugned order dated 12.09.2018 on the ground that the application was filed belatedly. The original suit is filed for cancellation of the subject sale deed on the ground that the execution of the sale deed is by impersonation and fraud etc. The crux of the matter is whether the signature and thumb impression on the subject sale deed were made by the petitioner herein/plaintiff or not. That is the main controversy in between the parties to the litigation.

8. In the given circumstances, if the disputed thumb impressions and the admitted thumb impressions of the petitioner/plaintiff are sent to the handwriting Expert, that will help the Court to come to a just conclusion. Though the subject Interlocutory Application is filed with delay and laches, to answer the substantial issues raised by both the parties in the suit, examination of the questioned thumb impressions with the admitted thumb impressions of the petitioner/plaintiff and opinion of the handwriting Expert is necessary. The Court below ought to have allowed the subject Interlocutory Application.

Under these circumstances, the impugned order is unsustainable and liable to be set aside.

9. Accordingly, the impugned order, dated 12.09.2018 passed in I.A.No.634 of 2018 in O.S.No.180 of 2010, by the learned VIII Addl. Senior Civil Judge, Ranga Reddy district at L.B.Nagar, is set aside. Consequently, I.A.No.634 of 2018 stands allowed and the Court below is directed to obtain the thumb impressions of the petitioner/plaintiff in the open Court and send the same along with the registered sale deed (Doc.No.514 of 1996), dated 03.02.1996, to the handwriting Expert for comparison of the thumb impressions of the executant available on the said registered sale deed with that of the thumb impressions of the petitioner/plaintiff taken in open Court and to give an opinion. Both the parties are directed to cooperate for expeditious disposal of the subject suit.

10. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

28th November, 2019
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Dr. SHAMEEM AKTHER, J