



CRP.PD.Nos.2569 & 2570/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on 04.02.2022</i>	<i>Delivered on 05.07.2022</i>
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CORAM

THE HON'BLE MR. JUSTICE S.S.SUNDAR

CRP.PD.Nos.2569 & 2570/2019 & CMP.No.16912/2019 in
CRP.PD.No.2570/2019

1.Youlande Louis [Nee Sinnas]
2.Etienne Sinnas .. Petitioners

Versus

1.Celestine Pushparaj
2.R.F.Maria Raj
3.A.Irudhaya Raj .. Respondents

Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.04.2019 passed in IA.Nos.505 & 503/2019 in OP.No.69/2013 on the file of the learned Principal District Judge, Puducherry.

For Petitioners in all
Petitions : M/s.S.P.Arthi

For Respondents in all
Petitions : Mr.John Zachariah



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COMMON ORDER

- (1) These two Civil Revision Petitions have been preferred by the revision petitioners in the Original Petition in OP.No.69/2013 on the file of learned Principal District Judge at Pondicherry, as against the order dismissing the applications in IA.Nos.503 and 505/2019, which were filed by the petitioners herein to reopen the petitioners' side evidence which was closed on 09.02.2019 and to issue subpoena to Professor Ramakrishnan, who has given expert opinion, for cross examination.
- (2) Brief facts that are necessary for the disposal of these Civil Revision Petitions are as follows.
- (3) The revision petitioners filed OP.No.69/2013 under Sections 234 and 279 of the Indian Succession Act to prove the Will in common form and to grant Letters of Administration to the Will stated to have been executed by late Mrs.Marie Gisle Therese Louise, It is the case of the revision petitioners that late Mrs.Marie Gisle Therese Louise is the wife of late Mr.Lourdes Marie Francois @ Lourdes Rassa.



- (4) The revision petitioners in their petition stated that Mrs. Marie Gisle Therese Louise is their paternal aunt being the sister of their father late Mr. Robert Sinnas. The Original Petition is for grant of Letters of Administration for the Will executed by Mrs. Marie Gisle Therese Louise [hereinafter referred to as the Testatrix]. The 1st respondent is the sister-in-law of the testatrix and respondents 2 and 3 are the sons of the other sisters-in-law of the testatrix who are no more.
- (5) It is stated that the testatrix had bequeathed her property in favour of her husband late Mr. Lourdes Marie Francois @ Lourdes Rassa. It is further stated that she gave life interest without a power of alienation. It is further stated that the property will thereafter be inherited by the petitioners herein in equal shares. The Will propounded by the petitioner was dated 31.05.1993 and it was registered as Document No. 174/1993. It is also admitted that the husband of the testatrix died on 13.06.1999. Hence, the petitioners herein filed OP.No.69/2013 with the aforesaid prayer.



- (6) The Original Petition was seriously opposed by the respondents herein who are the eldest sister-in-law and the legal heirs of the other sisters-in-law of the testatrix. It is the case of the respondents in the proceedings that the said Will executed by the testatrix was subsequently cancelled by her under the Deed of Cancellation dated 27.09.1995 which is also registered as Doc.No.344/1995.
- (7) M/s.S.P.Arthi, learned counsel for the revision petitioners contended that the cancellation of the Will in the year 1995 was specifically disputed by the revision petitioners herein and that the document cancelling the Will, is prepared with the forged signature of the testatrix. The deed of cancellation was also registered. Hence it is also alleged that the cancellation was registered by impersonation.
- (8) Therefore, the only issue is whether the Will originally executed in favour of the petitioners in the year 1993 was subsequently cancelled by the testatrix herself in the year 1995 and whether the subsequent document cancelling the Will is a forged or fabricated document registered by impersonation.



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(9) It is admitted before this Court that the petitioners' side witnesses were examined and the evidence on the petitioners' side was closed on 12.02.2019. When the case was posted for the respondents' side evidence, the revision petitioners filed two applications in IA.Nos.503 and 505/2019 to reopen the case and to recall the evidence on the expert opinion for cross examination and to send subpoena to Professor Ramakrishnan to adduce evidence. The said Interlocutory Applications were dismissed by the Court below on the ground that the petitioners have filed the applications after the evidence on their side was closed and that the Court has not ordered to send the documents for expert opinion and therefore, the examination of the so-called expert as a witness is in no way helpful to decide the case since the Court has not ordered for sending the documents for comparison to an expert. Aggrieved by the same, the present Civil Revision Petitions are filed.

(10) The Court heard the submissions made on either side and also perused the materials placed.



(11) It is to be seen that the revision petitioners have obtained the expert opinion on 18.01.2012 and the purpose of the above two Interlocutory Applications filed by them was to reopen the case for the purpose of examination of the expert witness. The revision petitioners have not filed any application for sending the disputed document along with documents containing the admitted signatures of testatrix to an expert for comparison of signature found in the Will executed by the testatrix and the subsequent document cancelling the Will. It is to be seen that the expert opinion was obtained by the revision petitioners even before the proceedings were initiated in March 2013. Stating that grant of letters of administration depends upon entirely on the validity of the Cancellation Deed, the learned counsel for the revision petitioners submitted that comparison of signatures in the disputed Cancellation Deed with the admitted signatures of testatrix by an expert is important and necessary in the interest of justice.

(12) Learned counsel further submitted that the revision petitioners



should given a fair opportunity to establish the truth merely because the petitioners have not approached the Court either by an independent application or to examine the expert from whom the report had already been obtained. The learned counsel then submitted that calling for an expert witness is also a right of the petitioners and the Trial Court cannot dismiss the applications merely on the ground that the original records had not been sent by the Court for comparison. In other words, it is submitted that the petitioners cannot be denied an opportunity to prove the expert's opinion.

- (13) ***Per contra***, learned counsel for the respondents submitted that the expert who has given opinion in this case, is the choice of the revision petitioners and that the Court cannot accept an expert opinion which was obtained independently by the petitioners in matters where an evidence of the so called expert will tilt the balance. The apprehension expressed by the learned counsel for the respondents is that the evidence of an expert who has been asked to do comparison work at the expense of the revision petitioners cannot be allowed as the expert cannot be expected to



be neutral in giving his opinion. The learned counsel also submitted that an expert opinion need not be necessary as the Court itself can compare the signature.

- (14) The learned counsel for the respondents submitted that the opinion of an expert cannot be permitted unless the Court is satisfied whether the expert is a reliable and truthful person having qualification or expertise in analysing the handwritings.
- (15) The learned counsel for the respondents, in support of his contentions, relied on the following judgments:-

[a]In the case of ***Fakhruddin Vs. The State of Madhya Pradesh*** reported in ***AIR 1967 SC 1326*** the Hon'ble Supreme Court has held in paragraph No.11 as follows:-

"11.Both Under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the



disputed ones, not to become an handwriting expert but to verify the premises of the expert in the one and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

[b]The decision of the Hon'ble Supreme Court in the case of ***Kanchansingh Dholaksingh Thakur Vs. State of Gujarat*** reported in ***1979 [4] SCC 599***, was relied upon for the proposition that the Court must be fully satisfied whether the expert is a truthful and reliable witness fully acquainted with an art of identification of handwriting in



order to opine whether the alleged handwriting has been made by a particular person or not?

[c]In the case of ***State of Himachal Pradesh Vs. Jai Lal and Others*** reported in ***1999 [7] SCC 280***, the Hon'ble Supreme Court has held as follows:-

"13. An expert witness is one who has made the subject upon which he speaks a matter of particular study, practice, or observation; and he must have a special knowledge of the subject. Shri P.C. Panwar in his evidence has stated that he passed B.Sc. (Agriculture) Honours from the University of Delhi in 1959; thereafter he did his M.Sc. (Horticulture) in 1967 from Punjab University. He joined the Agricultural Department in the year 1969 as a Research Assistant; he was promoted as Horticulture Development Officer in the year 1973 and at the time of the assessment he was working as District Horticulture Officer, Shimla. He has also stated that in the year 1986 he attended a 3 months' training course on apple technology in the University of Tasmania, Australia. The assessment in the orchards in question were made on different dates in November 1984. He has



fairly accepted the suggestion that he had not received any training with respect to assessment of apple crop but that has been a part of his job. The witness could not state the number of scab cases in which he had been called upon to make assessment. He has specifically stated in the case against Jai Lal and others that that was his first and last assignment till date as a commission for assessing productivity of an apple orchard.

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17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject."



In the very same decision, it is also observed by the Apex Court that the opinion expert can not go in evidence automatically and that he has to be examined as a witness in the Court and subjected to cross examination.

[d]The learned counsel also relied on the yet another decision of the Hon'ble Supreme Court in the case of ***Ramesh Chandra Agrawal V. Regency Hospital Limited and Others*** reported in **2009 [9] SCC 709**, wherein the Hon'ble Supreme Court has expressed its view in an unequivocal term that an expert must be within the recognised field of expertise and that his evidence must be based on reliable principles. Apart from that it is also reiterated by the Hon'ble Supreme Court that the expert must be qualified in that discipline. The Hon'ble Supreme Court has observed in paragraphs 20 and 22 as follows:-

"20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an



important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)

..

22. In the article “Relevancy of Expert's Opinion” it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which opinion is formed. The same is clear from the following inference:

“Mere assertion without mentioning the data



or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.”

[e]The High Court of Andhra Pradesh in ***Nallabothu Purnaiah Vs. Garee Mallikarjuna Rao and Others*** reported in ***AIR 2003 AP 201*** has held as follows:

"29.The law can thus be summarized that the proof of identification of handwriting or the signature, as the case may be, may be (1) by means of direct evidence; (2) by means of familiar evidence; (3) by means of comparison by the Court itself; (4) by the admission of parties; (5) by means of scientific comparison by an expert; and (6) by means of circumstantial evidence. By direct evidence means by examining the persons who are said to have been present at the time of writing of the disputed handwriting or signatures and by familiar evidence means by examining the persons



who are conversant with the handwriting and signatures of the executant.

30.If the mode of proof is by means of an expert evidence, it all depends upon the quality of opinion given by the expert by assigning cogent and convincing reasons in support of his opinion. If the quality of the opinion given by the expert is impeccable, having been supported by cogent and good reasons, there is no need to seek for any corroboration. If for any reason, the quality of the opinion is weak, it shall not be the sole basis for arriving at the conclusion unless it is corroborated by other means. The evidence of the expert being opinion evidence, cannot falsify the convincing direct evidence. In either case the relative quality of the evidence that tilts the scales. Although, there has been no legal bar to the Judge using his own eyes to compare the disputed writings with the admitted writings; as a matter of prudence, extreme caution, and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signatures with



that of the admitted signatures or handwritings and hesitate to base its findings with regard to the identity of the handwritings solely on such comparison made by itself. The power under Section 73 of the Evidence Act can be exercised by the Court ordinarily in normal course to test the veracity of the opinion given by the Expert or the other evidence adduced on the point by any one of the six modes enumerated above."

In the above judgment, the Court also has observed that no academic course is prescribed by any institution in the country, under which one is expected to obtain a degree or diploma for becoming an expert in the science of identification of handwriting and signatures.

(16) Referring to the above judgments, learned counsel submitted that the respondents cannot agree for calling any witness as an expert especially when the qualification and credentials of the independent expert who has been called upon by one of the party as a genuine attempt by the revision petitioners.

(17) This Court has no quarrel with any of the propositions and



propose to reiterate the following aspects to be kept in mind while considering expert's evidence regarding Handwriting.

(i) when expert opinion is obtained, the Court must satisfy itself by such means as are open to whether the opinion may be acted upon. The Court must see for itself and with the assistance of the expert come to its own conclusion whether the writings are by the same person.

(ii) In order to rely on evidence of an expert the Court must be fully satisfied that he is a truthful and reliable witness skilled and competent in the Art of identification of handwriting. It has to be shown that he has made a special study of the subject or acquired a special experience and knowledge in the art of handwriting. The expert should be examined as a witness and has to subject to cross-examination and the Court may also put question regarding his proficiency competency or any relevant question before it may decide whether to act upon the expert opinion.

(iii) The expert is not a witness of fact and his evidence is really of an advisory character. The expert is not expected to act as Judge or Jury as the real function of the expert is to put before the Court all the materials scientific criteria together with reasons which induce him to come to the conclusion so that the Court may form its own judgment



about the credibility, accuracy and evidentiary value of expert opinion.

- (18) It is to be noted that there is no legal embargo for getting opinion from the handwriting expert which would effectively assist the Court in reaching the just decision. Though the opinion of the expert is not final, the Court can very well judge the report on the basis of the facts and reasonings that may be offered by the expert. In the present case, it is not in dispute that the whole issue is whether the cancellation of the Will is forged or not?
- (19) Having regard to the nature of dispute, this Court is fully convinced that the revision petitioners are entitled to seek the assistance of an expert to prove their case. Unfortunately, the revision petitioners should have availed the opinion of the expertise through Court at the earliest point of time. Therefore, the contentions of the learned counsel for the revision petitioners that the revision petitioners were denied a fair opportunity to prove their case, cannot be countenanced. However, the Court cannot deny a valid opportunity to the petitioner to seek the assistance of an expert in the instance case citing the negligence of the revision petitioners.



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(20) The applications for reopening and examining the expert have to be considered in the light of various facts and circumstances of a particular case and there cannot be a general proposition covering all situations. In the present case, this Court is convinced that an expert opinion is necessary and the parties should be given fair opportunity to lead any form of evidence which would mitigate or which would minimize oral evidence. Since the expert who has now been called in, is the choice of the revision petitioners and the revision petitioners had not given the particulars about the expert, his qualification, expertise, this Court cannot permit the petitioners to reopen the case for examining the witness who has given opinion nearly ten years ago.

(21) However, having regard to the peculiar facts and circumstances of the case and the stake involved, this Court directs the Lower Court to send the documents containing the disputed signatures along with the documents containing the admitted signature of the testatrix to the Central Forensic Science Laboratory, Ramanthapur Colony Rd, near Hyderabad Public School, Rahat Nagar, Ramanthapur, Hyderabad, Telangana 500013, as it is being done



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in several cases. It is made clear that the said exercise shall be done by the Trial Court within a period of three weeks from the date of receipt of a copy of this order.

(22) It is also made clear that the Lower Court can appoint an Advocate Commissioner for the purpose of getting the expert opinion by sending the photographs of the documents to the above said Laboratory at Hyderabad. The Advocate Commissioner's fee and other expenses relating to this exercise shall be borne by the revision petitioners.

(23) In the result,

[i]**CRP.PD.No.2570/2019** filed as against the impugned order in IA.No.503/2019 in OP.No.69/2013 stands **allowed** and the case is reopened for the purpose of filing an application to send the documents for expert opinion, as indicated by this Court above.

[ii]**CRP.PD.No.2569/2019** filed as against the impugned order in IA.No.505/2019 to send subpoena to Professor Ramakrishnan to adduce evidence, is **dismissed**.

(24) Since this Court has already directed the Trial Court to send the



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documents for getting expert opinion, the Trial Court is expected to give further opportunity to the parties to examine the expert and lead further evidence. No costs. Consequently, connected miscellaneous petition is closed.

05.07.2022

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Internet : Yes

To

The Principal District Judge
Puducherry.



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S.S.SUNDAR, J.,

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Common Order in
CRP.PD.Nos.2569 & 2570/2019

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