

HON'BLE DR. JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION No.419 & 429 of 2020

COMMON ORDER :

As the issue involved in both the civil revision petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

2. Heard Mr. S. Sriramachandra Murthy, learned counsel appearing for the petitioner and Mr. P. Nagendra Reddy, learned counsel appearing for the respondents.

3. The petitioner herein is the 3rd defendant and the 1st respondent is the plaintiff. The 1st respondent herein filed suit in O.S. No.248 of 2014 before the court of the Senior Civil Judge, Nandigama (for short "the trial Court") for grant of partition. The father of the 2nd defendant/2nd respondent herein died intestate but the 3rd defendant, who is the petitioner herein set up false plea that their father executed a Will under Ex.B3 in favour of the 1st defendant and in turn the 1st defendant settled the property to the 3rd defendant/petitioner. Then the 3rd defendant/petitioner

examined one attester in the suit and scribe on the Will deed, but he failed to examine another attester Dendukuri Paripurnamma. It is stated that the said Will is forged one and he intends to send the document to the Expert. Therefore, the 2nd defendant/2nd respondent herein preferred the I.A.Nos.49 of 2019 & 51 of 2019 before the trial Court under Section 151 of CPC and under Order XVI Rules 1 to 5 and Section 151 of CPC seeking to reopen the matter and also to permit him to summon the SRO, Nandigama. After careful examination of the evidence and material on record, the trial Court allowed the said I.As on the ground that, as the matter is pending for reopening the suit for the evidence of 2nd defendant and also for issuing summons to SRO, Nandigama. Challenging the same, the petitioner/3rd defendant has preferred the present civil revision petitions.

4. On perusing the proceeding sheet, this Court, vide order, dated 17.02.2020, granted interim stay of all further proceedings in O.S No.248 of 2014 on the file of the learned Senior Civil Judge, Nandigama pursuant to the order in I.A No.51 of 2019, dated 11.12.2019, for a period of four weeks.

5. Learned counsel for the petitioner submits that the trial Court failed to see that having concluded that the suit is of the year 2014 and being an identified suit and also that the case has been coming up for arguments since 2017 after completion of the entire trial long back and hence the petition to reopen the case for adducing evidence is not entertainable and hence the impugned orders are liable to be set aside. He further submits that signatures of Akula Parvathalu on the document i.e., 8.10.1968 and Ex.B3 are not contemporaneous and the signature in the thumb impression register is the single signature and the same is not sufficient for comparison for sending the signatures to the Expert. So, the sale deed dated 8.10.1968 contains many signatures of Akula Parvathalu. As such, the 2nd respondent herein should have summoned the sale deed dated 8.10.1968 from the vendee of that sale deed dated 8.10.1968. learned counsel further contended that when there is direct evidence available in proving the signature of Akula Parvathalu on the Will/Ex.B3 the opinion of the Expert is of no use and it cannot be taken into consideration and the disputed signatures which are to be compared with

the admitted signatures are of the year 1995 and whereas the specific signatures are of the year 1968 and the gap of two signatures is about 27 years and in such a situation there should be some variations in the signatures. Therefore, learned counsel requests this Court to pass appropriate orders by setting aside the impugned orders passed by the trial Court.

6. On the other hand, learned counsel for the respondents submits that it is very necessary to summon the SRO because the 3rd defendant in the suit examined one attester and scribe on the Will deed but he failed to examine another attester i.e., Dendukuri Paripurnamma. According to the respondents, the said Will is forged one and he intends to send the document to the Expert. Hence, the trial Court has rightly concluded and passed the orders and there is no error or irregularity on the orders passed by the trial Court. Further, learned counsel opposed for grant of any relief in these petitions and prayed to dismiss the same.

7. Admittedly, the suit in O.S.No.248 of 2014 was filed for partition of the suit schedule properties by the plaintiff against the defendants. As seen from the material

on record, this Court observed that, the suit pertains to the year 2014 which comes under Pre-2015 cases. Moreover, it is the suit of identified one. At this stage, the 2nd defendant filed the petitions for reopening of the suit and also to summon the SRO, Nandigama and to give evidence and also to produce the registers maintained by the Registrar Office with regard to the document No.2634/1968, dated 8.10.1968 which bears the signature of Akula Parvathaklu and to give evidence and produce the documents which is thumb impression register.

8. On perusing the material, this Court further observed that, the 2nd defendant knows that his he along with his father and brother, executed a registered sale deed on 14.2.1994 bearing Doc.No.112/1994 of SRO, Nandigama in favour of Mohammad Nagul Meera, S/o Peer Saheb. The petitioner's father Akula Parvathalu executed a Will under Ex.B3 in favour of his wife bequeathing the plaint schedule property on 20.10.1995. so there is a clear time gap of nearly 27 years between the alleged sale deed which the 2nd respondent requested the Sub Registrar to produce the register maintained by the office with regard to the Sale deed

dated 8.10.1968 into Court and give evidence. The signature of Akula Parvatalu on the document dated 8.10.1968 and Ex.B3 are not contemporaneous. The signature in the thumb impression register is a single signature. A single signature is not sufficient for comparison and as such the thumb impression register is not sufficient for sending the signature for comparison. The sale deed dated 8.10.1968 contains many signatures of Akula Parvathalu and such the 2nd respondent should have summoned the sale deed from the vendee of that sale deed dated 8.10.1968.

9. This Court further observed that if there is long time gap between the admitted signatures of a person, there is every possibility of variation in signatures due to age factor. The disputed signatures which are to be compared with the admitted signatures are of the year 1995 and whereas specimen signatures are of the year 1968 and the gap of the two signatures is about 27 years and in such a situation, the opinion of the handwriting expert is not of much use in resolving the issue in the suit. There is no much use to compare the signature of a person said to have

been made in 1995 with that of signature made earlier in the year 1968 as there is likely to be some variations in the signatures. Admittedly, when there is direct evidence available in proving the signature, the opinion of expert is of no use and it cannot be taken into consideration. The opinion of the expert is only advisory in the nature and it is not conclusive proof.

10. In a case of **Ravi Satish v. Edala Durga Prasad and others**¹, wherein the High Court of Judicature, Hyderabad, held that, grant of leave by the Court is not for the mere asking nor is the Court a mere post-office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the written statement.

11. It is also settled principle of law that unless the order impugned suffers from jurisdictional error or patent perversity, the power of judicial review under Article 227 of the Constitution of India cannot be pressed into service.

12. In view of the foregoing discussion, this Court is of the view that, the document is of the year 1968, which sought to be summoned through the registrar only for the

¹ 2009 (3) ALT 236 (S.B.)

purpose of sending the same for comparison of signatures with the 2004 Will signature to the expert and for no other purpose and when legally such a course is not available, as the signatures are not contemporaneous, hence, the impugned orders are liable to be set aside.

13. Accordingly, both the Civil Revision Petitions are allowed. The impugned orders in both the revision petitions are hereby set aside. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

Date : -06-2023
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DR. K. MANMADHA RAO, J.

HON'BLE DR. JUSTICE K. MANMADHA RAO

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