

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition Nos.193 & 194 of 2023

COMMON ORDER:

C.R.P.No.193 of 2023 is preferred against the order, dated 08.12.2022, dismissing I.A.No.66 of 2020 in O.S.No.85 of 2012 on the file of the Court of Additional Senior Civil Judge, Fast Track Court, Gudivada, filed by the petitioner/plaintiff under Section 45 of the Evidence Act with a prayer to send exhibits B1 to B4 along with exhibits A6 to A12 to handwriting expert for comparison of her signatures, whereas, C.R.P.No.194 of 2023 is preferred against the order, dated 08.12.2022, dismissing I.A.No.65 of 2020 in the same suit filed by the very same petitioner under Section 151 CPC to reopen the suit for the purpose of sending the documents to the expert.

2. Heard *Sri P.S.P.Suresh Kumar*, learned counsel for the revision petitioner/plaintiff and *Sri Naga Praveen Vankayalapati*, learned counsel for the respondents/defendants 2 to 5. The 1st respondent died and hence, respondents 3 to 5 are added as legal representatives of 1st respondent, as per orders dated 15.07.2022.

3. Both these revisions arise out of interlocutory orders passed in the same suit, they are heard together and are being disposed of by way of this common order.

4. The facts, briefly stated, are as follows:

The plaintiff filed the suit for the relief of declaration and recovery of possession in respect of the plaint schedule property. The defendants resisted the suit on the ground that the plaintiff got executed the agreement of sale in favour of the 2nd respondent/defendant but the same is forged document. The petitioner/plaintiff claimed that her signature on the document, dated 15.07.1983, does not belong to her and was forged and that the scribe of exhibit B1 is also not examined on behalf of the defendants. Therefore, the petitioner says it is necessary to send exhibits B1 to B4 along with exhibits A6 to A12 to a handwriting expert for comparison of the signature of the petitioner/plaintiff.

5. The 2nd respondent/defendant filed counter which was adopted by defendants 1 & 3 in which they denied the petition averments and stated that the plaintiff clearly admitted her signature in her cross-examination and therefore, they need not be sent to an expert and further that the signatures on exhibits A7 to A15 are not on public or registered documents and pertain to

August and October, 1980, October 1981 and January 1982, i.e., beyond two years from admitted signature of the petitioner, dt.25.03.1984 and not fit for comparison. It is further stated that the petitions are filed only to drag on the suit proceedings and there are no merits and liable to be dismissed.

6. After hearing both sides, the trial Court dismissed both the petitions holding that once either party to the suit proceedings or witness admits the disputed signature, it cannot be sent to an expert for comparison.

7. Aggrieved thereby, the petitioner/plaintiff preferred these two revisions.

8. At the outset, C.R.P.No.193 of 2023 is taken up for consideration.

9. The grievance of the revision petitioner is that the trial Court ought to have seen that the petitioner specifically denied the execution of the alleged agreement of sale and pleaded fabrication and forgery of signatures therein and it ought not to have relied on mere one stray admission in the cross-examination of PW1, completely ignoring the immediate denial of execution of the disputed document in the very same cross-examination and also the

admission of DW1 expressing 'no objection' to seek opinion of an expert.

11. The respondents/defendants vehemently contended that merely because the petitioner denied, either in the pleadings or in the cross-examination, inspite of specifically admitting signatures on being showed to the witness seeking the relief is only a delay tactic and that the trial Court has rightly appreciated the matter and dismissed the petition.

12. A perusal of the record shows that the defendants filed written statement alleging that the plaintiff offered the plaint schedule property for sale on 15.07.1983 to 2nd defendant and executed the agreement of sale on that day by receiving advance amount referred therein and delivered possession also to 2nd defendant. The plaintiff has not filed any rejoinder to the pleadings taken in the written statement, but pleaded in the plaint that the defendants used to manage the schedule property as she was living away. She filed her evidence in chief examination in the form of an affidavit denying execution of the agreement of sale, dated 15.07.1983, and also receipt of the advance amount and delivering possession of the property to 2nd defendant etc., and claiming that the signatures on the said memo and the endorsement on rear side are rank forged.

However, in her cross-examination when she was shown the signatures on the agreement of sale, dated 15.07.1983, she admitted her signatures, and thereby, they are marked as exhibits B1 and B2. However, immediately when it was suggested to her that she received Rs.19,500/- on 25.03.1984 in relation to the said contract of sale and put her signature under exhibit B1 and similarly another suggestion was given regarding the signature under exhibit B2, she denied the suggestion. Similarly, she denied the suggestion that she put her signature across the revenue stamp affixed on the contract of sale, dated 15.07.1983. DW1 also admitted the signatures of the plaintiff, separately marked as exhibits A6 to A12 in his cross-examination. He further stated that he has no objection to send exhibits A6 and B3 to B5 to an expert for comparison of the writings. Of course, exhibits A7 to A12 are marked after such admission is recorded. Therefore, the plaintiff seeks comparison of the disputed signatures on the agreement of sale with her admitted signatures under exhibits A6 to A12.

13. The purpose of seeking opinion of an expert is to ascertain whether the writings or signature is that of the person who disputed it. Moreover, the opinion is only relevant evidence and not the conclusive proof. In view of the evidence already before the Court and as the trial Court is competent to examine under Section 73 of

the Evidence Act, this Court is of the view that there is no irregularity or illegality committed by the trial Court in rejecting the petition. As such, there is no reason to interfere with the impugned order passed in I.A.No.66 of 2020.

14. In view of the foregoing discussion, C.R.P.No.193 of 2023 is dismissed.

15. Since C.R.P.No.193 of 2023 is dismissed, C.R.P.No.194 of 2023 which is preferred against the order, dated 08.12.2022, dismissing I.A.No.65 of 2020 to reopen the suit for the purpose of sending the documents to the expert, shall automatically stand dismissed.

16. Accordingly, both the revisions are dismissed.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

B.S.BHANUMATHI, J

26.07.2023
RAR