
(2007) 04 AP CK 0089
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4429 of 2006

Bayya Mohan Rao and Another

APPELLANT

Vs

Parsia Bala Subrahmanyeswara Rao

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14, 151
Evidence Act, 1872 — Section 45

Citation : (2007) 5 ALD 239 : (2007) 4 ALT 436

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; V.V. Ramana, for the Respondent

Judgement

L. Narasimha Reddy, J.—The respondent filed O.S. No. 38 of 2002 in the Court of II Additional District Judge, Vijayawada, against the petitioners for the relief of partition of the suit schedule properties and for cancellation of sale deed dated 8-3-2002, in relation to "B" Schedule property He has also prayed for a decree for damages and other reliefs. The plaintiff was subsequently amended in certain respects. The respondent filed I.A.No. 450 of 2006, under Order 7 Rule 14 read with Section 151 C.P.C., with a prayer to condone the delay in receiving the documents mentioned therein. The first document is, the opinion rendered by the handwriting expert by name, Sri C.S.R. Murthy, and another is, a letter addressed by the expert to the petitioners, returning the documents, after rendering the opinion. The remaining document are, registration extract of G.P.A. and certified copies of vakalat, written statement, counter, etc. In the affidavit filed in support of the petition, the respondent herein stated that the G.P.A., dated 4-2-2002, said to have been executed by him, is not genuine, and after obtaining registration extract thereof, he sent the same along with the certified copies of the documents, containing his signature, to an expert by name C.S.R. Murthy, to avoid delay in the matter, and that the report of the expert has since been received. It is alleged that the opinion of the ex parte to the effect that the alleged G.P.A. is not genuine; was also referred to.

2. The 1st petitioner filed a counter-affidavit, opposing the application. It is stated that, sending of the documents to an expert without the intervention of the Court is impermissible in law. He pleaded that the opinion rendered in such a case is invalid and not binding on the parties. As objection is taken to the provision invoked in the I.A. The trial Court allowed the I.A. through its order dated 10-7-2006. Hence, this OR.P.

3. Sri P.R. Prasad, learned Counsel for the petitioners submits that the provision invoked by the petitioners has absolutely nothing to do with the relief claimed in the I.A. He further contends that whenever a party to a suit intends to secure the opinion of handwriting expert, he has to file an application u/s 45 of the Evidence Act (for short "the Act"), and it is for the Court to pass appropriate orders on such application, depending on its satisfaction. He submits that the trial Court did not apply its mind to the facts of the case, and had mechanically allowed the I.A.

4. Sri V.V. Ramana, learned Counsel for the respondent, on the other hand, submits that, it is always open to a party to the suit, to secure opinion of an expert, and place it before the Court, which in turn, would be subject to scrutiny, at the stage of evidence. He contends that the opinion rendered by the expert is subject to further scrutiny, and no exception can be taken to the filing of such an opinion, secured by the respondent, on his own accord.

5. One of the reliefs claimed by the petitioners (sic. respondent) is, the cancellation of a sale deed. It was urged that the G.P.A., on the strength of which, the sale deed was executed; is forged one. Having taken such a plea, the respondent ought to have ensured that an issue is framed on it. Since there is a controversy as to the genuinity of the signature on the G.P.A., the only course open to the respondent was, to file an application u/s 45 of the Act, to send the disputed document, for examination by an expert, after comparing the signature thereon, with the undisputed signature. Further, it is not as if reference of document, to an expert, is a matter of course. In case, the Court is satisfied that the controversy can be resolved without reference to an expert, it may reject the application filed u/s 45. This much, however, can be said that, an expert opinion, in relation to disputed document, can be secured only through an order of the Court, and not voluntarily by a party to the suit. If the opinions are on the points of foreign law, or of science, or of art, which are already in existence, by the time the suit is filed, they can be relied upon, as being relevant to the controversy in the suit. An opinion to be procured during the pendency of a suit, that too, in relation to a document, which is the subject-matter of the suit; cannot be secured, except with the leave, or with the intervention of the Court.

6. In the instant case, the respondent has chosen to send the so-called disputed document and certified copies of vakalat, pleadings etc., to an expert, by himself. The justification pleaded by him is that, the expert was likely to leave for abroad. It is a matter of common knowledge that, even when the opinion of an expert is sought through an order of the Court, it is the originals of the disputed and admitted documents, that are forwarded. The expert would be in a position to

analyse the slant and other features of the disputed and admitted signatures. It is not known as to how it occurred to the respondent, that an expert opinion can be sought, by sending the certified copies of documents, that too, without the knowledge of the Court, and his opponent in the suit.

7. Another infirmity is that the petitioner invoked Order 7 Rule 14 C.P.C., in the present application. The said provision deals with the documents, which are to be filed along with the suit. Admittedly, the documents, that were sought to be filed through the I.A., were not supposed to be enclosed to the plaint. The petitioners filed a counter affidavit, raising several objections to the maintainability, as well as the merits of the petition. The trial Court has chosen to pass a cryptic order in allowing the I.A., which reads as under:

Petitioners counsel present, heard arguments, perused the material record. In the light of justice the petition allowed to receive the documents subject to relevance and proof.

8. This Court is of the view that in a matter of this nature, the trial Court ought to have bestowed greater attention, since valuable rights of the parties are involved.

9. The C.R.P. is accordingly allowed, and the impugned order is set aside. The I.A. shall stand dismissed. It is however made clear that it is open to the respondent, to take necessary steps, to seek the opinion of the expert on the disputed document, strictly in accordance with law, if he is so advised.

10. There shall be no order as to costs.