
(2009) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6476 of 2006

Bhupathiraju Ravi Kumar

APPELLANT

Vs

Paluri Surya Prakasa Rao (died) and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 114, 3, 45, 46, 47

Citation : (2009) 3 ALD 405 : (2009) 3 ALT 294

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Ramachandra Raju, for the Appellant; M.S. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri C. Ramachandra Raju, learned Counsel representing revision petitioner and Sri M.S. Ramachandra Rao, learned Counsel representing contesting respondent.

2. This civil revision petition is filed as against an order made by the learned Senior Civil Judge, Bhimavaram, in I.A. No. 1382 of 2005 in O.S. No. 29 of 1997.

3. The revision petitioner, first defendant in the said suit, filed an application I.A. No. 1382 of 2005 on the file of the Senior Civil Judge, Bhimavaram, u/s 45 of the Indian Evidence Act, 1872 (hereinafter in short referred to as "the Act" for the purpose of convenience) praying for the relief of referring the suit promissory note, dated 16.4.1994, to handwriting expert for the purpose of comparison of signatures of promissory note with admitted signatures and for opinion of handwriting expert as to the forgery or otherwise. The learned Senior Civil Judge, Bhimavaram, having formulated the point for consideration at para 6, recorded reasons in detail at paras 7 to 12 and ultimately came to the conclusion that the application is devoid of merit and accordingly dismissed the same without costs. Aggrieved by the said order, the said petitioner in the said

application-first defendant had preferred the present civil revision petition under Article 227 of the Constitution of India.

4. Sri C. Ramachandra Raju, learned Counsel representing the revision petitioner had taken this Court through the contents of the order impugned in the civil revision petition and would maintain that the reasons recorded by the learned Senior Civil Judge, Bhimavaram, are totally unsustainable reasons. The counsel also would maintain that the learned Judge ought to have referred the suit promissory note for opinion of the handwriting expert, since the plaintiff had not chosen to get the document examined by handwriting expert despite the specific defence of the revision petitioner that the suit promissory note is a forged one. The learned Counsel also would maintain that the learned Judge should have held that mere gap of five years in between the admitted signatures of the father of the petitioner and disputed signatures may not cause any change in the signature and the signature of the petitioner is available on the deposition, vakalat and written statement and these admitted signatures could have been sent for the purpose of comparison with the disputed signatures. The counsel also would maintain that the learned Judge ought to have taken the view that the failure on the part of the plaintiff in not asking for the opinion of the handwriting expert would create strong suspicion as against the case of the plaintiff and in this context the opinion of handwriting expert would play a crucial role in deciding the case. The counsel also would maintain that mere examination of the witnesses may not be a substitute for the opinion of the handwriting expert. The learned Counsel made elaborate submissions relating to scope and ambit of Section 45 of the Act and also relied on certain decisions in this regard.

5. Per contra, Sri M.S. Ramachandra Rao, the learned Counsel representing contesting respondent had taken this Court through the relevant portions of the order under challenge in the present civil revision petition and also would further maintain that the suit was instituted in the year 1997 and after a lapse of about 8 years this application had been thought of u/s 45 of the Act. The counsel also would maintain that the learned Judge had dismissed the application not only on the ground of gap of years between the admitted signatures and the disputed signatures, but further had relied on certain decisions and had taken note of the moving of the application after a long lapse of time and ultimately dismissed the application. The counsel also would maintain that the opinion of expert is only opinion evidence and the Court also is empowered to compare the signatures to arrive at the just and proper conclusion and, at any rate, in the light of the reasons which had been recorded in detail by the learned Senior Civil Judge, Bhimavaram, this is not a fit case to be interfered with under Article 227 of the Constitution of India. The learned Counsel also relied on certain decisions to substantiate his submissions.

6. In the light of the submissions made by the counsel on record, the question to be decided is "whether the dismissal of the application by the learned Senior Civil Judge, Bhimavaram, to send the document in question, the suit promissory note,

to an handwriting expert for the purpose of comparison can be said to be just and proper in the facts and circumstances of the case?"

7. For the purpose of convenience the parties hereinafter would be referred to as petitioner and second respondent.

8. It is needless to say that the second respondent is second plaintiff, the contesting respondent; the petitioner is the first defendant in the suit aforesaid.

9. The said application I.A. No. 1382 of 2005 was filed u/s 45 of the Act for the purpose of comparison of the signatures on the promissory note in question with the other admitted signatures. In the affidavit filed in support of the application by the revision petitioner it was stated that R-1 filed the suit against R-3 and R-4 on the foot of alleged promissory note, dated 16.4.1984, alleged to have been executed by the father of the petitioner and also the petitioner himself in his favour and that the petitioner filed written statement alleging that the alleged promissory note is a rank forgery and it is essential for referring the promissory note to a handwriting expert for opinion. Pending disposal of the main suit first respondent-plaintiff died and R-2, as a legatee of a Will, executed by R-1 was impleaded.

10. R-2 filed counter stating that R-1 filed the suit in 1997 and the written statement was filed on 24.4.1998 and in the said written statement the petitioner alleged the suit promissory note as rank forgery, but he had not taken any steps or filed any petition to send the promissory note to a handwriting expert for comparison of signatures for about 8 years and at a belated stage this application had been filed. It is also stated that the petitioner and his father borrowed Rs. 50,000/- from R-1 on 16.4.1994 and executed a promissory note agreeing to repay the same with interest at 24% per annum and in spite of legal notice the petitioner did not repay the amount. It is further stated that no useful purpose would be served by sending the signature on the promissory note and on the registered partition deed, dated 02.01.1989, for comparison, when the gap between the signatures on these two documents are many years and that every two signatures of the same person cannot be similar. After a gap of 11 years the opinion of expert does not serve any purpose and, hence, the petition is liable for dismissal.

11. The plaintiffs filed the suit for recovery of amount on the strength of a promissory note executed by the father of the first defendant and first defendant on 16.01.1994 for Rs. 50,000/- and since the father of the first defendant died even prior to the filing of the suit, the suit was filed against D-1 and the sisters of D-1 as legal representatives. Defendant No. 1 is not only legal representative of the deceased father, but he also executed the promissory note jointly along with his father. Pending disposal of the suit, first plaintiff died and during his life time he executed a Will under which the right to recover the debts of the testator had been bequeathed in favour of plaintiff No. 2.

12. It is needless to say that the second respondent herein is the said second

plaintiff who is at present contesting the present civil revision petition. On behalf of the plaintiffs second plaintiff had examined herself as P.W.1; the scribe and the attestors of the Will were examined as P.W.2 and P.W.3 and the attesor and scribe of the suit promissory note were examined as P.Ws.4 and 5. The suit promissory note was marked as Ex.A-1; the registered legal notice was marked as Ex.A-2; postal receipts were marked as Exs.A-3 to A-5; the Will was marked as Ex.A-6; the certificate was marked as Ex.A-7 and the vakalat and counter therein were marked as Ex.A-8 and Ex.A-9 filed by deceased father of the plaintiff in I.A. No. 461 of 1991 in O.S. No. 136 of 1990 and also I.A. No. 464 of 1991. On behalf of defendants D-1 examined himself as D.W.1 and marked original registered partition deed, dated 02.01.1989.

13. The present application was filed on 18.10.2005 and the suit was ripe for trial and the trial had been commenced. The stand taken by the revision petitioner-first defendant is that he pleaded the ground of forgery and hence the disputed document-promissory note to be sent to handwriting expert for the purpose of comparison with the admitted signatures. The learned Senior Civil Judge, after recording reasons in detail, came to the conclusion that this application had been thought of after 8 years of the filing of the suit and in the event of direct evidence relating to execution of promissory note being available, this may not be much help, since this is only opinion evidence and also came to the conclusion that the signatures of the contemporaneous period not being available even if the document in question to be sent to handwriting, it may not be of much help for the Court in deciding the suit in the light of the plea of forgery. The learned Judge in fact, relied on the under noted decisions while recording the findings.

- (1) Vadrevu Annapurnamma Vs. Vadrevu Bhima Sankararao and Others, ;
- (2) Bonala Raju and Another Vs. Sarupuru Sreenivasulu, ;
- (3) Nimmagadda Padmanabha Rao v. Smt. Kosaraju Satyavathi 2006 (5) ALT 586;
- (4) Korvi Rosaiah Vs. Mitta Srinivasa Reddy, ;
- (5) Kaveti Sarada v. Vemineni Hymavathi 2006 (4) ALT 56;
- (6) Velamala Jagadish v. Ippli Haranadha Rao 2004 (2) AWR 46;

14. Sri C. Ramachandra Raju, representing revision petitioner, no doubt, placed strong reliance on the decision of the learned Judge of this Court in Velaga Sivarama Krishna Vs. Velaga Veerabhadra Rao and Another, wherein the learned Judge at paras 6, 7 and 8 observed as hereunder.

The learned Counsel for the respondents placed reliance on certain judgments rendered by this Court and Supreme Court in support of his contention that it need not be sent to the handwriting expert when there is a long gap between the date of document and the date of comparison.

In *Renu Devi Kedia Vs. Seetha Devi*, , there is a dispute regarding the signatures on a document of the year 1995. The specimen signatures of the person were obtained in 2004. It was brought to the notice of the Court that there was a gap of 9 years between the date of signature on the disputed document and the date of signatures taken in the Court. Under those circumstances, this Court held:

The disputed signatures are of the year 1995 and whereas the specimen signatures are of the year 2004, there is a gap of nearly nine years between the two signatures. So far as signatures of the petitioners appearing in written statement etc., there is every possibility of his disguising his style of signature so as to make them dissimilar with the disputed signatures. Since there are no contemporaneous signatures for comparison with the disputed signatures, there is no useful purpose in sending the suit documents to an expert for his opinion. The trial Court considered the matter in right perspective and dismissed the application. I do not see any valid ground to interfere with the impugned order.

In *Pamu Padmavathi Vs. Perati Yakub Reddy*, , a suit was filed for recovery of money on the foot of the promissory note. At the stage of trial, the defendant filed an application requesting the Court to send the document for expert opinion for comparison of the signatures. The trial Court dismissed the application. When a revision came up for hearing, this Court held:

For comparison of any signature on the suit promissory note with the admitted signature, there is no necessity to send the suit document to the expert. Section 73 of the Indian Evidence Act provides for comparison of signature, writing or seal with others admitted or proved. Under the law, it is always open for the Court itself to compare the signature on the promissory note with the admitted signature of the defendant i.e., the petitioner herein to find out its genuineness. It is only when the Court is unable to come to a just conclusion on such comparison, then expert's opinion may be required. The admitted signature of the defendant is always available with the trial Court because at the time when the defendant engaged his counsel, Vakalat would be filed by the counsel, wherein the defendant signs and the Court can always look into that signature and compare it with that of the suit promissory note. Hence, there is no need to refer the suit document to the expert's opinion.

In the above decisions rendered by this Court, no authoritative pronouncement of the Supreme Court has been relied on and the learned single Judges expressed opinions that since there are no contemporaneous signatures for comparison of the disputed signatures, no useful purpose will be served in sending the document to the expert for his opinion. The Court expressed the said view by taking into consideration that the disputed signatures are of the year 1995 and the specimen signatures are of 2004 and there is a gap of 9 years between the two signatures. But, from the facts of the present case, the above decisions are distinguishable, therefore, they are not applicable to the present case. In *A. Neelalohithadasan Nadar Vs. George Mascrene and Others*, , the Supreme Court held that:

Handwriting may be proved on admission of the writer or by the evidence of some witness in whose presence it was written. This is direct evidence. In the absence of such direct evidence, opinion of handwriting expert or of some who is familiar with the writing of the person is relevant. Thus besides direct evidence which of course is the best method of proof, the law makes two other modes also as relevant, i. e. , a writing may be proved to be the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to compare the handwritings on a scientific basis. A third method is also provided by the Evidence Act in Section 73. It is comparison by the court with the writing made in the presence of the court or admitted or proved to be the writing of the person. The court can apply its own observation to the admitted or proved writings and to compare them with the disputed one. This comparison depends on an analysis of the characteristics in the admitted or proved writings and of the same characteristics in large measure in the disputed writing. Even if there is the opinion of the expert on the handwriting, it is subjected to the scrutiny by court. The expert's opinion is not the final word. The court must see for itself whether it can safely be held that the two writings are of the same person. To this extent, court may play the role of an expert. The court can accept the disputed signature to be that of the witness when it is satisfied on its observation that it is safe to accept the same.

The Court further observed that although Courts should be slow in resorting to this method, we do not find it faulted as the method adopted by the Court is in conformity with Section 73, when larger public interest is served by expeditious disposal of the election petition.

Under the Indian Evidence Act, two direct methods of proving the handwriting of a person are:

- (a) by an admission of a person who wrote it;
- (b) by the evidence of some witness who saw it being written by that person.

Apart from these, there are some other methods of proving the handwriting by opinion. They are:

1. by the evidence of handwriting expert (Section 45).
2. by the evidence of a witness acquainted with the handwriting of the person who is said to have written the disputed writing (Section 47).
3. opinion formed by the Court itself on comparison made of the disputed writings with the admitted or specimen writings (Section 73).

In *Fakhruddin v. State of M.P.* (1980) 1 SCC 704, the Supreme Court held: Both u/s 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 one, not to become an handwriting expert but to verify the premises of the expert in the one case 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 Court may accept that 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.

In *The State (Delhi Administration) Vs. Pali Ram*, , the Supreme Court in para 30 of the Judgment held that:

30. ...Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

While there is no doubt that the Court can compare the disputed handwritings with the admitted handwriting, such comparison by Court without the assistance of any expert has always been considered hazardous and risky.

In *Murali Lal v. State of M.P.* (1980) 1 SCC 704, the Supreme Court indicated the circumstances in which the court may itself compare the disputed and admitted writings thus:

Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like Illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that "a fact is said to be proved when, after considering the

matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we act on artificial standard of proof not warranted by the provisions of the Act. Further, u/s 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinion of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need to no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

In Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, , after noticing various features of the opinion of the expert said:

We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case all the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly in consistent with it.

So, there was acceptable direct testimony which was destructive of the expert's opinion; there were other features also which made the expert's opinion unreliable. The observations regarding corroboration must be read in that context and it is worthy of note that even so the expression used was "it is usual" and not "it is necessary.

In Magan Bihari Lal Vs. The State of Punjab, , the Supreme Court held:

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. L But,

having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

In *Vadrevu Annapurnamma Vs. Vadrevu Bhima Sankararao and Others*, , the A.P. High Court observed thus:

There are many factors which have to be taken into consideration in effecting a comparison of the two signatures, and although a Court could apply its own eyes and its own mind to determine whether a particular signature is resembling another it would be going beyond the ordinary limits of the capacity of a Court to constitute itself as a Handwriting Expert and try to compare the signature without all the gadgets and devices which are available to a Handwriting Expert, besides the lack of expert knowledge which a Handwriting Expert possesses.

The above legal position makes it clear that the expert's opinion is not excluded from the purview of examination and it was opined that it will help the Court in exercising power of comparison u/s 73 of the Evidence Act. Whenever a party disputes the signature on a particular document, two remedies are open to him, either to request the court to compare the signatures or to file an application to send the document to the expert for comparison. When the petitioner opted to file an application to send the document to the handwriting expert, no prejudice will be caused to either party. When he is asserting that the signature is that of the said party, even though there is a gap between the disputed signatures and admitted signatures, a science has been developed to compare such signatures also by taking into consideration the direction of the strokes, the speed of writing, the pattern of writing etc., therefore, it cannot be said that no useful purpose will be served by sending the document to the expert. After comparison, if the similarities of the disputed signature and the admitted signatures are very negligible, then the Court can formulate its opinion with the assistance of the expert's report and by comparing the signatures whether the report has to be accepted or not. But, if the opportunity is denied to the defendant and if the matter is carried to the Appellate Court, there is every likelihood of commenting that he did not avail the opportunity of filing an application for sending the document for handwriting expert's opinion, if he is so sure that the disputed signature does not belong to him.

In view of the circumstances, I am of the view that it is essential to send the document to the expert for comparison at the request of the party in the

interests of justice, which cannot cause any amount of prejudice to the plaintiffs in the present suit, therefore, the order of the lower Court is liable to be set aside.

15. The learned Counsel representing contesting respondent placed strong reliance on the decision in Renu Devi Kedia Vs. Seetha Devi, wherein the learned Judge observed at para 5 as hereunder.

Coming to the facts on hand, the disputed signatures are of the year 1995 and whereas the specimen signatures are of the year 2004, there is a gap of nearly nine years between the two signatures. So far as signatures of the petitioners appearing in written statement etc., there is every possibility of his disguising his style of signature so as to make them dissimilar with the disputed signatures. Since there are no contemporaneous signatures for comparison with the disputed signatures, there is no useful purpose in sending the suit documents to an expert for his opinion. The trial Court considered the matter in right perspective and dismissed the application. I do not see any valid ground to interfere with the impugned order.

16. Further reliance was placed on the decision in Vadrevu Annapurnamma Vs. Vadrevu Bhima Sankararao and Others, wherein this aspect had been dealt with in the context of a disputed Will.

17. In Bonala Raju and Another Vs. Sarupuru Sreenivasulu, learned Judge of this Court observed at para 10 as hereunder.

The fact that respondent did not take steps to send Ex.A1 to an expert is of no consequence because Section 73 of the Evidence Act empowers the Court to compare the signatures to decide their genuineness or otherwise. The trial Court, after comparing the signatures of the first appellant on Ex.A1 with the admitted signatures, came to a conclusion that a signature in Ex.A1 is that of his in spite of the fact that there is omission of one small line therein, which is found in the admitted signatures. Obviously the trial Court must have compared the signature of the 1st appellant in his written statement, vakalat, and the suit summons with that in Ex.A1, because no other documents containing the signature of the 1st appellant are available on record. All those signatures are subsequent to Ex.A1. The possibility of the 1st appellant trying to disguise his signature cannot be ruled out. It is also well known that no two genuine signatures would be identical and there would always be some variation between the two genuine signatures because it is almost impossible for a person to make two signatures exactly alike in all details. In fact some persons find it difficult to sign on revenue stamps, as perforations of stamps impede speed. So while signing across a revenue stamp the signatory may miss some details or characteristics of his usual signature. In view therefore the fact that there is a small omission in the signature of the first appellant found in Ex.A1, which is present in the other admitted signatures of his compared by the Courts below, cannot be a ground for holding that the signatures found in Ex.A1 is not that of the first appellant.

18. The twin reasons recorded by the learned Senior Civil Judge while dismissing the application that the application had been thought of at a belated stage after a lapse of 8 years after institution of the suit and yet another reason contemporaneous signatures for the purpose of comparison being not available it may not serve any desired useful purpose. These reasons being sustainable reasons, this Court is of the considered opinion that the order under challenge in the present civil revision petition does not suffer from any illegality or legal infirmity warranting interference under Article 227 of the Constitution of India. Hence, this Court is not inclined to disturb the order made by the learned Senior Civil Judge aforesaid and accordingly the said order is hereby confirmed.

19. The civil revision petition is hereby dismissed as being devoid of merit, this Court, however makes no order as to costs.