
(2012) 09 AP CK 0059

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 28 of 2012

Chityal Gundameede Ramalakshamma

APPELLANT

Vs

Ediga Rangamma and 6 Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10A
Evidence Act, 1872 — Section 45, 73

Citation : (2012) 6 ALT 539

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : U. Ramanjaneyulu, for the Appellant; K. Sitaram, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. Feeling aggrieved by Order, dated 19-12-2011, in IA. No. 870 of 2011 in OS. No. 349 of 2008, on the file of the Court of the learned Principal Junior Civil Judge, Dhone, Kurnool District, the defendant in the suit filed this Civil Revision Petition. Heard Sri U. Ramanjaneyulu, learned Counsel for the petitioner, and Sri K. Sitaram, learned Counsel for the respondents.

2. The respondents filed the above-mentioned suit for specific performance of agreement of sale, dated 17-05-2003. In her written statement, the petitioner has taken the plea that the suit document marked as Ex. A.1 is a rank forgery and that the thumb impressions on the said document are not of her. After completion of the oral evidence on the plaintiff's side, the petitioner has filed IA. No. 870 of 2011 under Order XXVI Rule 10(A) and Section 45 of the Indian Evidence Act, 1872, seeking sending of Ex. A.1-agreement of sale to the Forensic and Handwriting Expert for an opinion on the genuineness of the thumb impressions thereon after comparing with the specimen left thumb impression of the petitioner. This application was dismissed by the Court below on the sole

ground that it is belated.

3. The learned Counsel for the petitioner placed reliance on the judgment of this Court in *Guru Govindu Vs. Devarapu Venkataramana*, wherein this Court *inter alia* held as under:

The trial Court dismissed the application of the petitioner on two grounds. The first is that it was filed at a belated stage and the second is that in view of existence of power in the trial Court u/s 73 of the Act, it may not be necessary to accede to the request to send the documents to an expert's opinion. The first reason assigned by the trial Court does not appear to be sound. It is not as if the application u/s 45 of the Act must be filed soon after the written statement is presented. There may be instances where the necessity to file such application would arise after the oral evidence of certain witnesses is over. In case, the party concerned is able to elicit necessary information or admissions during the course of evidence, the necessity to file an application u/s 45 of the Act may not arise. Nothing prevents the party to a suit to file an application u/s 45 of the Act, even at the stage of arguments.

4. In the present case, the respondents have examined PWs. 1 to 4, who are attestors, the document writer and the scribe of Ex. A.1. From the observations of the lower Court, it appears that all the witnesses have deposed in favour of the respondents and against the petitioner. As observed by this Court in *Guru Govindu* (cited *supra*), as the petitioner evidently failed to elicit anything incriminating with regard to the genuineness of Ex. A.1, she has come out with the present application. I am, therefore, of the opinion that the petitioner is entitled to seek the expert's opinion on the genuineness or otherwise of Ex. A.1 with reference to the thumb impressions attributed to her's. On the facts and circumstances of the case, I am, therefore, of the view that even though the petitioner filed the application after closing of the evidence on the respondent's side, the same should not have been rejected as belated. As the document contained thumb impressions and not the signature, it is not possible for the Court to undertake comparison by itself and when the petitioner has come out with her version at the earliest possible time in her written statement itself wherein she has disputed the thumb impressions on Ex. A.1, it is appropriate in the interests of justice that the petitioner is provided with an opportunity to substantiate her plea by securing the opinion of the forensic expert. In this view of the matter, the Order under revision is set aside. The lower Court is directed to obtain thumb impressions of the petitioner in the open Court and send Ex. A.1 along with such thumb impressions for comparison to a forensic expert. The lower Court shall dispose of the suit, as expeditiously as possible, immediately on receiving the opinion of the forensic expert.

5. Subject to the above directions, the Civil Revision Petition is allowed. As a sequel, interim order, dated 06-01-2012, is vacated and CRPMP. No. 38 of 2012 is disposed of.