
(2004) 08 AP CK 0088
In the Andhra Pradesh High Court
Case No : CRP No. 2746 of 2004

Gandey Sravan Kumar

APPELLANT

Vs

D. Srinivas (died) by LR.

RESPONDENT

Date of Decision : 07-08-2004

Acts Referred:

Evidence Act, 1872 — Section 45, 51

Citation : (2004) 5 ALD 441 : (2004) 5 ALT 827

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : R. Chandrasekar Reddy, for the Appellant; T. Surya Kiran, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This civil revision petition is filed against the Order dated 2.4.2004 in I.A. No. 1380 of 2003 in O.S. No. 50 of 1999 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad.

2. The I.A. related to summoning of a document, being Ex.A.10, in O.S. No. 122 of 1998, decided by the Court of I Additional Chief Judge, City Civil Court, Hyderabad, and the subject-matter of C.C.C.A. No. 77 of 2003 in this Court.

3. Between the petitioner and the respondents two sets of suits are pending in the trial Court. O.S. Nos. 50, 51 and 52 of 1999 are filed by the respondents for recovery of possession of ground, first and second floors respectively of a building on the plea that though the petitioner had executed sale deeds in respect of them, possession was not delivered. The petitioner in turn filed O.S. Nos. 348, 349 and 350 of 1998 in the same Court for cancellation of the sale deeds. The trial of the suits commenced. While in the first set, the evidence is being recorded in O.S. No. 50 of 1999, in the second set it is being recorded in O.S. No. 348 of 1998.

4. Petitioner filed two applications in O.S. No. 50 of 1999. I.A. No. 1381 of 2003

is filed to call for a document, Ex.A.10 in O.S. No. 122 of 1998 on the file of the I Additional Chief Judge, City Civil Court, Hyderabad, and I.A. No. 1380 of 2003 to send that document for Handwriting Expert. I.A. No. 1381 of 2003 was ordered on 3.9.2003 and the document was secured. The Trial Court dismissed the I.A. No. 1380 of 2003 holding that the document is not relevant for the suit transaction and that once it formed part of record of another proceedings, it is impermissible for it to undertake any adjudication of the same.

5. Learned Counsel for the petitioner submits that the very purpose of summoning the document was to get it examined through an Handwriting Expert, and once the order in the I.A. became final, it was not open to the Trial Court to refuse to send the same to be examined by a Handwriting Expert.

6. Learned Counsel for the respondents, on the other hand, submits that it is not mandatory for the Court to send every document for examination by an expert and it would depend on the facts and circumstances of the case. He contends that there is no relevance of the said document to the facts of the case.

7. The suits between the petitioner and the respondents relate to recovery of possession and cancellation of the sale deeds respectively. The petitioner did not dispute the execution of the sale deeds. He seeks the relief of cancellation of the sale deeds, in view of the facts pleaded by him in the plaint. The present I.A. is filed, in the set of suits filed by the respondents for the relief of recovery of possession. The document, which is sought to be got examined through an Handwriting Expert, is a letter said to have been addressed by the petitioner herein, enclosing certain banker's cheque.

8. The circumstances under which opinions of experts can be treated as relevant, the categories of such opinions etc., are dealt with under Sections 45 - 51 of the Evidence Act. Basically, a witness is to be examined for what he has seen, or* directly perceived, in relation to the fact in issue, or a relevant fact, in the case before the Court. Formation of opinion, on the set of facts placed before it, is the exclusive function and prerogative of the Court. Generally, opinions or beliefs, of a third person, are inadmissible in evidence (See Babuli alias Narayan Bahera Vs. The State of Orissa,). However, there may be certain issues before the Court, which need expertise, in relation to science, art etc., to form an opinion, in relation to the subject-matter of the suit. These are outside the legal and judicial fields. A Judge is not supposed to possess the expert knowledge in such fields. It is for this reason, that Law of Evidence provides for expert opinion, to be adduced as evidence, subject to certain conditions, in the fields like foreign law, science, art, or identity of handwriting. u/s 45 of the Evidence Act, the opinions rendered by such experts, are treated as relevant. The amount of care and caution exhibited by the Parliament, in treating such opinions as relevant, is evident from Section 46. Under this provision, an otherwise irrelevant fact, is attached relevance, if it supports, or is inconsistent with the opinion of expert. Expert opinions, even when proved in accordance with law, at the best, constitute material for the Court, to arrive at a proper conclusion. The ultimate

discretion to pronounce upon the concerned issue rests with the Court.

9. A party to the proceedings before a Court cannot be permitted to adduce expert opinion, as evidence, unless it relates to the issue involved in such proceedings, and unless it is necessary for the Court to form an opinion on such aspect. Therefore, if the document, in relation to which the expert opinion is sought to be secured, does not have any bearing on the issue, pending adjudication before the Court, or where the Court does not feel the necessity to form an opinion, the request made by a party in this regard can be rejected.

10. Reverting to the facts of the case, it is evident that the main issue involved in the suits, filed by the respondents, is as to whether they are entitled to recover possession from the petitioner, on the basis of the sale deeds executed by them. The letter, which is sought to be got examined by an expert, has absolutely no bearing on the main or subsidiary issues, in the suits filed by the respondents.

11. One serious impediment in acceding to the request of the petitioner is that the document proposed to be sent for examination is not filed for the first time in these proceedings. It is already part of the record in O.S. No. 122 of 1998. That Court had already recorded a finding about the document. Further, it is the subject-matter of an appeal before this Court, Therefore, it is not at all competent for any other Court to adjudicate upon the genuinity or otherwise of that document. Such a course of action would lead to dangerous consequences. If any finding is permitted to be recorded by the Trial Court, in relation to the document in question (Ex.A-10), on the basis of expert opinion that may be secured, it would amount to permitting it to decide the contours of the appeal pending before this Court.

12. The effort of the petitioner appears to be, to delay the disposal of the suits filed by the respondents and to deny them the relief. The Trial Court has discussed the matter with reference to the settled principles of law and the same does not call for any interference.

13. The CRP is accordingly dismissed. No costs.