
(2010) 11 AP CK 0039

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 359 of 2007

Jalagadugula Eswara Rao and Others

APPELLANT

Vs

Davala Surya Rao

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 10, Order 26 Rule 10A
Evidence Act, 1872 — Section 45

Citation : AIR 2011 AP 78 : (2011) 2 ALD 572 : (2011) 1 ALT 652

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Nimmagadda Satyanarayana, for the Appellant;

Final Decision : Allowed

Judgement

B. Chandra Kumar, J.—This Civil Revision Petition is directed against the order dated 02.12.2006 passed in I.A. No. 1668 of 2006 in O.S. No. 293 of 2005 by the Junior Civil Judge, Gajuwaka.

2. The brief facts of the case are as follows :

The Petitioners herein are the Defendants in the Original Suit. The Respondent herein filed a suit for recovery of Rs. 82,399.99ps basing on the promissory note alleged to have been executed by one Jalagadugula Rajamma, W/o. Late Appanna mother of the Petitioners" herein. The Petitioners" herein, in their written statement, have specifically averred that the Respondent herein had forged and fabricated the alleged promissory note and taking advantage of the death of Jalagadugula Rajamma - mother of the Petitioners" herein, got filed a suit into Court to have illegal gain. It is also specifically averred that the said promissory note was rank forged and fabricated document.

3. As seen from the record, it appears that the Respondent herein, who was the Plaintiff in the suit, filed chief affidavit on 30.06.2006 and the Petitioners herein, who were the Defendants in the suit, having taken some adjournments, did not

cross-examine P.W.1 and the cross-examination of P.W.1 was marked as nil. Subsequently, they filed an application to permit them to cross-examine P.W.1 which was allowed and P.W.1 was cross-examined on 24.08.2006. The chief affidavit of P.W.2 was filed on 17.10.2006 and then I.A. No. 1668 of 2006 was filed to send the disputed documents to the handwriting expert for his opinion.

4. The Court below, observing that the application was filed at a belated stage and that whenever application for sending a particular disputed document to an expert is filed, that does not mean that necessarily and automatically the said petition may have to be allowed, dismissed the application. Aggrieved by the same, this revision is filed.

5. Sri Nimagadda Satyanarayana, learned Counsel for the Petitioners" submitted that the impugned order is illegal and that an application u/s 45 of the Indian Evidence Act, 1872, read with Order XXVI Rule 10-A Code of CPC can be filed at any stage of the trial. In support of his contention, he relied upon the judgment of this Court in case between Janachaitanya Housing Ltd. Vs. Divya Financiers, wherein, it was observed that "no time could be fixed for filing applications u/s 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of each case". Learned Counsel had also relied upon the judgment of this Court in case between Koneti Lakshmi Thulasamma Vs. Gangavaram Veera Raghava Reddi, wherein, it was observed that "it is too early and premature to invoke the provisions of Order 20 Rule 10 of the Code of CPC without laying a foundation during the trial".

6. Heard the learned Counsel for the Petitioners. In spite of service of notice, there was no representation for the Respondent.

7. The only point that arises for consideration in this revision is whether the impugned order is sustainable.

8. Section 45 of the Indian Evidence Act, 1872, reads thus :

When the Court has to form an opinion upon a point of foreign law or of science or art, or as identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts.

9. Order XXVI Rule 10-A of the Code of CPC reads as follows :

10A. Commission of Scientific Investigation - (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

10. A cogent reading of the above provisions make it clear that it is the discretion of the Court to send any disputed document to an handwriting expert for his opinion so as to ascertain whether the signature or the thumb impression is forged or not. Such discretion has to be exercised judiciously and in a fair manner. Whether to send a disputed document to the handwriting expert or not depends upon the nature of the rival contentions of the parties and the nature of evidence already let in. If there are laches on the part of the parties in protracting the litigation, the Court may impose costs or pass conditional orders. But that cannot be a ground to deny the relief sought by the parties at the time of trial.

11. As far as the trial Courts are concerned, the trial Courts should allow the parties to adduce the oral and documentary evidence intended to be adduced by them, of course, which appears to be relevant for the purpose of the case. The doors of the trial Court should not be closed at this stage, denying the opportunity to any party, to adduce any evidence. When a document is said to be forged and when a party has specifically denied the signature or the thumb impression on that particular document, such party should certainly have an opportunity to send the document to the handwriting expert for comparison of the disputed signatures or the thumb impression with admitted signatures or the thumb impressions. Of course, the evidence of the expert is also not conclusive. The Court has to examine the entire evidence on record, probabilities of the case including the evidence of the handwriting expert and on critical analysis, it should come to a conclusion. But at the stage of trial of a case, the trial Court must give reasonable opportunity to the parties to adduce evidence. Of course, where the parties are not diligent or intending to protract the litigation, the Court may pass conditional order imposing suitable conditions.

12. In the light of the above discussion and having regard to the overall facts and circumstances of the case, I am of the view that the impugned order is liable to be set aside.

13. In the result, the Civil Revision Petition is allowed setting aside the impugned order of the Court below. Consequently, I.A. No. 1668 of 2006 in O.S. No. 293 of 2005 on the file of the Junior Civil Judge, Gajuwaka, stands allowed. There shall be no order as to costs.