
(2012) 09 AP CK 0079

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 402 of 2012

Jonnalagadda Ravi Sankar

APPELLANT

Vs

Jakka Rama Krishna Rao and Another

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Evidence Act, 1872 — Section 45

Citation : (2013) 1 ALD 213 : (2013) 3 ALT 798

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Sai Gangadhar Charmarthy, for the Appellant; P. Venkat Rao, for the Respondent

Judgement

Hon'ble Sri. Justice L. Narasimha Reddy

1. The petitioner is the husband of the 2nd respondent and the 1st respondent is his father-in-law. It appears that the relationship between the petitioner and the respondent is strained. The petitioner filed O.S. No. 41 of 2008 in the Court of Senior Civil Judge, Avanigadda against the respondents for the relief of specific performance of an agreement of sale, dated 13.07.2003. According to him, the 1st respondent, who is the owner of the property, offered the same to the petitioner for a consideration of Rs. 1,70,000/- and executed an agreement of sale, on receiving a sum of Rs. 1,68,000/-. The respondents filed written statement opposing the suit. Issues were framed and the trial of the suit commenced. On behalf of the petitioner, P.W.2, the scribe of the agreement was examined. Though in the chief-examination, he supported the version of the petitioner, he appears to have stated something different in the cross-examination. Faced with this situation, the petitioner filed I.A. No. 804 of 2011 u/s 45 of the Evidence Act (for short "the Act") with a prayer to send the document to a hand writing expert. The application was opposed by the respondents. The trial Court dismissed the I.A. through order, dated 03.12.2011 on the ground that no contemporaneous document signed by the 1st respondent is available

and that the signatures on the vakalat and written statement in the suit are at variance with the one on the document. Hence, this civil revision petition.

2. Heard Sri Sai Gangadhar Chamarthi, learned counsel for the petitioner and Sri P. Venkat Rao, learned counsel for the respondents.

3. The exercise to be undertaken u/s 45 of the Act is somewhat typical. It is only an expert, who is conversant with the niceties of writing etc., that can express his view as to whether a particular writing or signature sent for comparison is that of the person, who is alleged to have subscribed to it. The existence of contemporaneous documents would certainly be helpful to an expert. Further, if the signatures on the depositions or the vakalat or pleadings are similar to those on the disputed document, they may also, be of help. However, it is too difficult to expect the existence of contemporaneous documents or similarity between signatures on the disputed documents and those on the pleadings and vakalat. Mere absence of such helpful circumstances cannot render the whole exercise u/s 45 of the Act impossible or untenable. An expert is known for his capability to arrive at the conclusion even by taking note of the undisputed writing irrespective of the time gap between the date of the sample and the date on which the disputed document was signed. At any rate, the opinion expressed by an expert is not conclusive in nature and the parties to the litigation can certainly put forward their contentions in favour of or against such opinion. The grounds mentioned by the trial Court while rejecting the application cannot be sustained.

4. Accordingly, the civil revision petition is allowed and the order under revision is set aside. As a result, the I.A. stands allowed and the trial Court is directed to send the documents to an expert together with the specimen signatures of the 1st respondent taken and certified by the trial Court.

5. The miscellaneous petition filed in this writ petition also stands disposed of. There shall be no order as to costs.