
(2012) 01 AP CK 0067

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5388 of 2011

P. Seshagiri Rao and another

APPELLANT

Vs

P. Soma Sekhar Rao and another

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 45, 73

Citation : (2012) 4 ALD 536 : (2012) 5 ALT 68

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

Bench : Single Bench

Advocate : Manjiri S. Ganu, for the Appellant; R.A. Achutanand, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J

1. This civil revision petition arises out of order, dated 28.09.2011, in I.A.No. 79 of 2011, in O.S.No. 37 of 2003, on the file of the learned Judge, Family Court, Secunderabad. The petitioners filed the suit against the respondents for declaration of their title and also for cancellation of the judgment and decree, dated 12.07.2002, in O.S.No. 1203 of 2001, on the file of the learned XI Additional Junior Civil Judge, Secunderabad and for consequential injunction. The evidence has commenced in the year 2008. The respondents have confronted petitioner No. 1, who was examined as PW.1 with Exs.B5 and B6, which were the purported receipts issued by the petitioners. After closure of the evidence on the petitioners' side and during the course of evidence of the respondents' side, Ex.B10 was marked through the chief examination of DW.2 in June, 2010. The petitioners filed I.A.No. 79 of 2011 for sending Exs.B5, B6 and B10 for the opinion of an expert as to the genuineness of the contents of Exs.B5 and B6 and the signatures on Ex.B10. The respondents have resisted the said application. The Court below on considering the respective pleadings and the material on

record dismissed the said application.

2. A perusal of the order of the Court below would show that the application was dismissed on three grounds, namely, that the same was filed at a belated stage, that in the plaint, the petitioners have not denied the signatures on the receipts and that PW.1 during his cross-examination admitted the signatures but denied the contents thereof and hence the burden is on the petitioners to prove that they have never received any amounts under those receipts.

3. At the hearing, Ms.Manjiri S.Ganu, learned counsel for the petitioners, strenuously contended that the Court below has committed serious error in rejecting the petitioners' application as it has failed to exercise discretion vested in it u/s 45 of the Indian Evidence Act, 1872 (for short "the Act"). In support of her submission, she has placed reliance on the judgments of the Supreme Court in *The State (Delhi Administration) Vs. Pali Ram, , Damara Venkata Murali Krishna Rao v. Gurujupalli Satvathamma* 2008-AWC-4-3790 and a Division Bench of this Court in *Janachaitanya Housing Ltd. Vs. Divya Financiers*,

4. Sri R.A.Achutanand, learned counsel for the respondents, seriously opposed the above submissions of the learned counsel for the petitioners. He submitted that the application was filed in order to prolong the litigation, that the petitioners were well aware of the receipts which were passed on by them as evident from their legal notice got issued as far back as 18.12.2001. He has further stated that having allowed the suit filed by his clients for specific performance of agreement of sale to be decreed ex parte, the petitioners filed the present suit for cancellation of the judgment and decree in the said suit and that they have not shown any diligence whatsoever in filing the application for sending the disputed documents for expert's opinion.

5. I have carefully considered the submissions of the learned counsel for the parties.

6. As far as the judgments on which reliance was placed by the learned counsel for the petitioners are concerned, there is no quarrel on the legal proposition that an application for sending the disputed documents for expert's opinion cannot be dismissed on the sole ground of delay. If the Court feels that the expert's opinion is needed for adjudicating on the dispute relating to the genuineness of the documents or their contents, it can send the document for the expert's opinion at any stage. However, the Courts refrain from exercising such discretion if it forms an opinion that the parties are not diligent in filing the said applications or that there are no bona fides behind filing such applications.

7. In the instant case, the petitioners pleaded that they have handed over the registered sale deed to respondent No. 1 i.e., elder brother of petitioner No. 1, to construct building thereon by arranging payment to him, that respondent No. 1 made an attempt to construct the building in the said site in the name of the petitioners and that thereafter, they arranged the funds. It is their further case that respondent No. 1 misused the offer by handing over the title deeds to

respondent No. 2 in order to grab the land taking advantage of permissive possession. Before filing the said suit, the petitioners caused a legal notice issued on 18.12.2001, wherein they have categorically stated that they have not received any consideration in respect of half of the total extent of land purchased through the document of 1984, much less they have agreed to sell the same and that both the respondents might have used the signed papers of the petitioners intended for other purposes as receipts in favour of respondent No. 2. They have denied execution of any receipt.

8. It is thus evident that the petitioners were aware of existence of certain receipts, the genuineness of which were denied much prior to the filing of the suit. However, the plaint is conspicuously silent on the genuineness or otherwise of the receipts. As noted above, Exs.B5 and B6 whose contents are disputed, were introduced in evidence by the respondents, while cross-examining PW.1 on 15.08.2009. No application was made for sending the said documents for the opinion of the expert within a reasonable time thereafter. It is only after DW.2 has introduced Ex.B10 through her chief examination that the present application is filed. Moreover, it is the case of the respondents that in the suit in which an ex parte decree was passed, these receipts were filed as exhibits. These facts would clearly disclose that the petitioners are well aware of the existence of the disputed documents for a long time, but for the reasons best known to them, they did not come with an application at an earlier point of time. I am, therefore, of the opinion that the application filed by the petitioners is not only belated but the same lacks bona fides.

9. In the above circumstances, I am of the view that the Court below has not committed any jurisdictional error warranting interference of this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. This order, however, will not preclude the petitioners from requesting the Court to compare the contents of Exs.B5 and B6 and the signatures on Ex.B10. If such a request is made, the Court below shall exercise its discretion u/s 73 of the Act and render its findings thereon.

10. Subject to the above observations, the civil revision petition is dismissed. As a sequel to dismissal of the civil revision petition, C.R.P.M.P.No. 7632 of 2011 shall stand disposed of as infructuous.