
(2007) 09 AP CK 0024
In the Andhra Pradesh High Court
Case No : CRP No. 4092 of 2007

Perugu Rama Rao and Another	Vs	APPELLANT
Palagani Ratnakumari		RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 45

Citation : (2008) 1 ALD 531 : (2008) 2 ALT 783

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The respondent filed O.S. No. 324 of 1998 against the petitioners in the Court of I Additional Junior Civil Judge, Guntur, for the relief of specific performance of two agreements of sale, dated 11.4.1990, in respect of items 1 and 2 of the plaint schedule property. The trial Court decreed the suit. Aggrieved thereby, the petitioners filed A.S. No. 133 of 2004 in the Court of III Additional Sessions Judge, at Guntur. At a later stage, they filed I.A. No. 399 of 2007, u/s 45 of the Evidence Act (for short "the Act"), with a prayer to send the agreements of sale, marked as Exs. A-1 and A-3, to a handwriting expert, for comparison of signatures thereon, with certain other documents. The respondent opposed the application, and through its order dated 19.7.2007, the lower Appellate Court dismissed the I.A. Hence, this C.R.P.

2. Sri P.R. Prasad, learned Counsel for the petitioners submits that the mere fact that an application, u/s 45 of the Act, was not filed during the pendency of the suit; cannot be treated as a factor, to deny the relief to the petitioners, at the stage of appeal.

3. Petitioners suffered a decree for specific performance of agreements of sale, in

the suit. It is not as if they were denied the opportunity to lead such evidence, as they intended to, before the trial Court. It is no doubt true, that they disputed their signatures on the agreements of sale. However, they did not feel the necessity of sending the documents for the examination of an expert during the trial. They came forward with an application u/s 45 of the Act, only at the stage of appeal.

The parameters that apply to an application under Rule 27 of Order 41 C.P.C., i.e. for adducing additional evidence at the stage of appeal; apply to the petitions, filed u/s 45 of the Act also, if they are presented during the pendency of an appeal. Two circumstances mentioned therein, viz., that, failure of efforts for similar exercise made before the trial Court; or, that, in spite of their due diligence and best efforts, they could not take such a step, before the trial Court; must be proved. It is only then, that an application for sending a document for expert's opinion, at the stage of appeal can be considered.

4. In *Pulaparti Sankuntala Bai Vs. Mygapula Ramanjaneyulu*, , this Court observed the importance of the timing and the stage at which, an application u/s 45 of the Act, must be filed, even during the pendency of a suit. It was pointed out that an application for such a relief cannot be entertained, after the witnesses, particularly whose signatures are in dispute; have been subjected to chief and cross-examinations. The scrutiny becomes much more stringent, when the application is filed for the first time, at the stage of appeal. Years of delay in filing the application, after the appeal was admitted, adds further to the complexity. The lower Appellate Court applied the correct principles of law, and dismissed the application filed by the petitioners. This Court does not find any basis to interfere with the same.

5. The CRP is accordingly dismissed. There shall be no order as to costs.