
(2017) 04 AP CK 0071

In the Andhra Pradesh High Court

Case No : Civil Revision Petition Nos.6069 and 6071 of 2016

Polana Jawaharlal Nehru

APPELLANT

Vs

Maddirala Prabhakara Reddy

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 3 ALT 712 : (2017) 3 AndhLD 579

Hon'ble Judges : V. Ramasubramanian, J.

Bench : Single Bench

Advocate : Sri A. Bhaskara Chari, Advocate, for the Petitioner; Sri V.S.R. Anjaneyulu, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V. Ramasubramanian, J.—These revisions arise out of the dismissal of two applications filed by the petitioner/defendant, seeking the reopening of his evidence and also for sending the suit promissory note Ex.A.1 for examination to a Handwriting Expert.

2. Heard Mr. A. Bhaskara Chari, learned counsel for the petitioner/defendant and Mr. V.S.R. Anjaneyulu, learned counsel for the respondent/plaintiff.

3. The respondent herein filed a suit in O.S.No.1263 of 2015 against the petitioner herein, for recovery of money on the basis of a promissory note dated 08-12-2012. The petitioner herein filed a written statement contending, inter alia, that he borrowed an amount of Rs.8,00,000/- from a person by name Raghava Arjuna Rao on 13-08-2010 and also created a mortgage in his favour; that at the time of borrowal, the said Ragha Arjuna Rao took his signatures in a blank promissory note and a blank cheque; that though the entire mortgage debt was discharged by him, the said Raghava Arjuna Rao filed a suit in O.S.No.63 of 2013; that the petitioner never borrowed any money from the respondent herein and that with the assistance of the said Raghava Arjuna Rao, the respondent fabricated the blank promissory note given by him and filed the present suit.

4. The trial Court framed issues and evidence on both sides was closed and the matter was posted for arguments on 11-11- 2016. At that time, the defendant, who is the petitioner herein, filed 2 applications, one for reopening his evidence and another for sending the promissory note for examination by a Handwriting Expert. But both these applications were dismissed by the trial Court, forcing the petitioner to come up with the above revisions.

5. Interestingly, this is not a case where the petitioner denies his signature in the suit promissory note. His only case is that he signed a blank promissory note on 13-08-2010 and gave it to one Raghava Arjuna Rao and that the said promissory note was filled up by the respondent herein in June, 2014 to come up with the present suit. Paragraph 5 of the affidavit of the petitioner filed in support of the applications out of which the present revision petitions arise reads as follows:

"5. I further submit that I signed on the empty promissory note and cheque in August, 2010 and handed over the same to the Sankarasetty Raghava Arjuna Rao. The plaintiff and Sankarasetty Raghava Arjuna Rao, the 2nd attestor and the scribe filled up the empty portion of the promissory note and cheque in the year June 2014. On specific verification the signature on the promissory note and the matter on Ex.A.1 promissory note clearly discloses the variation. As such, it is necessary to sent the Ex.A.1 promissory note to the handwriting expert for deciding the age of the ink used for putting signature and the age of the ink used for filling the matter of the promissory note as there is a clear variation of 4 years approximately between the age of the ink used for putting the signature and the age of the ink used for filling up the matter in the empty promissory note."

6. In other words the only purpose for which the petitioner wants to send the suit promissory note for examination by the Handwriting Expert is to show that the age of the ink was nearly 5 years old and not one year old, when the suit was filed.

7. But, prima facie, the attempt of the petitioner to establish the age of the writing, appears to be far-fetched. According to the petitioner, his signature was made on 13-08-2010 in the promissory note. But Ex.A.1 bears the date 08-12-2012. The suit was filed in December, 2015. The cheque allegedly issued by the petitioner and which bounced, was dated 02-07-2014. The returned cheque and the cheque return memo are filed as Exs.A.3 and A.4. The petitioner has not made any prayer for referring the age of the writing in the cheque for examination by the Handwriting Expert.

8. In any case, it is highly doubtful that it is possible for a Handwriting Expert to fix the age of the ink where the dispute with regard to the age is only 4 years. At least if the time gap is about 30 to 40 years, it may perhaps be possible for the handwriting expert to fix the age. But when the time gap pleaded is just about 4 years, I do not think it is possible to fix the age.

9. Several decisions were cited on both sides and I shall take up those decisions

for consideration in the chronological order.

10. In *Shashi Kumar Banerjee and others v. Subodh Kumar Banerjee* AIR 1964 Supreme Court 529 the Supreme Court quoted from the book of Osborn, on "Questioned Documents", to the effect that the chemical tests to determine age also, as a rule, are a mere excuse to make a guess and furnish no reliable data upon which a definite opinion can be based. The Supreme Court actually cautioned that even if the disputed documents are referred to experts and their opinion obtained, such opinion constitutes only an opinion and cannot take the place of substantive evidence.

11. Taking clue from what the Supreme Court said in *Shashi Kumar Banerjee*, a learned Judge of this Court extracted in *Uppu Jhansi Lakshmi Bai v. J. Venkateswara Rao* 1993 (3) ALT 446 another passage from the same author Osborn to the following effect:

"There are those also who pretend to say how old a writing is by merely examining it with a hand magnifier or a microscope. This always is an exhibition, either of ignorance or of dishonest presumption. The chemical tests to determine age also, as a rule, are a mere excuse to make a guess and furnish no reliable data upon which a definite opinion can be based as can easily be demonstrated by fair tests on documents of known age."

12. However, Mr. Bhaskara Chari, learned counsel for the petitioner placed strong reliance upon a three successive decisions of a learned Judge of the Madras High Court to the effect that it is possible for a Handwriting Expert to fix the age of the writing. In his decision in *A. Sivagnana Pandian v. M. Ravichandran* 2011 CrL. Law Journal 4152 and which was followed in *Elumalai v. Subbaramani* 2011 (6) MLJ 524, the learned Judge of the Madras High Court quoted the certain excerpts from the latest edition of "Examination of Disputed Documents" by Bhuvan. But none of the portions extracted by the learned Judge from the book, throw any light upon the question whether it is possible to identify the age of the ink on a document when the time gap pleaded is only about 4 years.

13. In a rather painstaking exercise, the learned Judge of the Madras High Court has quoted extensively from (i) "Forensic Science in Criminal Investigation and Trials" by B.R. Sharma, (ii) "Suspect Documents their scientific examination" by Wilson Harrison and (iii) "Scientific Examination of Questioned Documents" by Jan Seaman Kelly. But none of those portions indicate anywhere that the outcome of such examination of the ink could be very fruitful.

14. It is an admitted fact that the science relating to forensic examination of Handwriting, especially in relation to the fixation of the age of the ink, is not perfect. In cases of this nature any reference of a document to the Handwriting Expert just for the purpose of finding out whether the ink was 5 years old at the time of institution of the suit or 3 years old at the time of institution of the suit, is not likely to bring any fruitful result. Interestingly in one of the books relied upon by the learned Judge of the Madras High Court, namely "Handwriting

Forensics" by B.R. Sharma, Chapter 25 contains a Glossary under the title "Documenpaedia". In the said chapter, there is an interesting portion relating to "INK AGE". This portion reads as follows:

"INK AGE: Age of the writing can sometime be given in relative terms. Upkeep of the document plays an important role. Ink has been extensively studied to fix the age of the documents. There are two aspects which have been explored.

* The compositions of inks in common usage have been changing continuously. It was the carbon ink (known as Indian Ink) to start with. It changed to iron tannin inks, then to water-soluble dye inks and later to organic solvent inks as for ball pens. New dye inks are coming up continuously. Thin Layer Chromatography (TLC) can easily identify the ink dye even from an ink line without visibly damaging the writing line. High Performance TLC gives better results. The date of induction of a particular ink, therefore can be ascertained with the help of its manufacturer. If a document is purported to be written prior to its induction of the ink, it is obviously false.

In some countries data relating to induction of various inks is kept for ready reference.

* Some inks fade with time. The extent of fading may give some idea about the age of the writing.

* Inks diffuse in the paper. The extent of diffusion may give some guess about the age of writing.

* Iron inks become darker in colour with age. The shade of the ink may give some idea of the age of writing.

* In some countries age marker chemicals, usually radioactive materials, are added to the ink. They indicate the age of the writing.

* Fresh ink is easily smudged. Older inks do not smudge easily. The ease of smudging may give a rough estimate of the age of the writing.

The methods listed above look impressive. But in practice it is seldom that correct age of the document can be determined as there are many variables which affect the changes in the ink.

Age markers can give correct age of the writings. However, they are not used in India."

15. Therefore, it is clear that no useful purpose will be served by referring the document to the Handwriting Expert. Hence, the dismissal of the applications by the Court below cannot be found fault with. Therefore, the Civil Revision Petitions are dismissed.

16. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.