

(2004) 06 AP CK 0026

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2002 of 2004

S. Zaheer Ahmed Khan and Another

APPELLANT

Vs

S. Nazeer Ahmed Khan and Another

RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2

Evidence Act, 1872 — Section 145

Registration Act, 1908 — Section 17, 49

Citation : AIR 2004 AP 505 : (2004) 4 ALD 466 : (2004) 5 ALT 113

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : B. Narasimha Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This revision is preferred by defendants 1 and 3 in O.S. No. 12 of 1995 on the file of the Court of Junior Civil Judge, Alampur, questioning the order dated 20-4-2004 of the learned Junior Civil Judge refusing to give an exhibit mark to a document put to P.W.1 (plaintiff) during Cross examination as the execution of that document was denied by him.

2. The contention of the learned counsel for the revision petitioners is that in pursuance of an agreement between the plaintiff and defendants in the suit, a letter was executed by the plaintiff in favour of the defendants and for reasons best known to him, plaintiff denied his signature in the letter, and so the defendants filed a petition to send the said document i.e. letter, to an expert to compare the signature therein with the admitted signatures of the plaintiff, who after examining the signature in the letter and the admitted signature opined that the signature in the disputed document (letter) was made by the person who made the admitted signature i.e. plaintiff, and when the plaintiff was giving evidence as P.W.1, the counsel for the defendants confronted the said document (letter) to the witness i.e. P.W.1 but the witness i.e. P.W.1 denied the signature

and contents therein, and when the counsel for defendants wanted to get the document (letter) marked in B-series, so that it will be available on record as the document confronted to the witness (P.W.1) and can be made use of when the defendants adduce their evidence, the Court below refused to give an exhibit mark to the document, under an erroneous impression that it cannot be given an exhibit mark when the witness denied it. It is his contention that since the opinion of the expert shows that the said document (letter) contains the signature of plaintiff it can be given an exhibit mark though plaintiff denied its execution.

3. It is no doubt true in trial Courts some times the document put to witness during cross examination would be given an exhibit mark, though the witness denies that document, for the limited purpose of identification, to show that that document was confronted to the witness during cross examination, though it has to be proved by other evidence by the party producing the document. In this case there is no such identification crisis because the disputed document is said to have been sent to an expert and so the document that is sent to the expert is an ascertainable document.

4. The document in question (letter) is said to be an agreement between the parties to the suit. Before admitting the document in evidence, question as to whether the said document is properly stamped and it requires registration as per the provisions of the registration Act has to be ascertained. If a document requires registration, in view of Section 49 of the Registration Act, it cannot be admitted in evidence except for collateral purpose. If a document, which requires compulsory registration is not registered, the signature therein also cannot be looked into as held in *Sanjeeva Reddi Vs. Johanputra Reddi*, . If the document is not properly stamped unless stamp duty and penalty are paid, it cannot be received in evidence as mandated by the Stamp Act.

5. In this case, since the witness (P.W.1) denied the contents, and his signature also, in the disputed document (letter), question of giving an exhibit mark to the document for purpose of identification when its identification is not in doubt, does not arise. Defendants 1 to 3 who are relying on the said document can take steps to get it marked during the course of their evidence if it was produced into Court within the time granted by the court for filing documents. If the defendants have not filed the said document along with their written statement or within the time granted by the Court, they have to produce the document by filing a petition under Rule 2 of Order 13 CPC to receive the said document into Court. A document can be admitted in evidence only when the witness to whom it is put, admits its execution and its contents. If it is part of a statement made by the witness earlier, and if he denies the same, it can be used for contradiction u/s 145 of Evidence Act. Even if the witness admits the document and if it is hit by the provision of the Stamp Act and Registration Act, it can be admitted in evidence only after complying with the provisions of the Stamp Act and Registration Act.

6. In this case since P.W1 denied the contents and his signature on the disputed document, the only course open to defendants 1 to 3 is to get the said document admitted in evidence during the course of their evidence if it is properly stamped and if does not require registration u/s 17 of the Registration Act.

7. For the above reasons, I find no merit in this revision. Hence the C.R.P. is dismissed. No costs.