

(1993) 07 AP CK 0030

In the Andhra Pradesh High Court

Case No : Civil Revision Petitions No's. 3549/92 and 2564/92

Uppu Jhansi Lakshmi Bai

APPELLANT

Vs

J. Venkateswara Rao

RESPONDENT

Date of Decision : 20-07-1993

Acts Referred:

Evidence Act, 1872 — Section 45

Negotiable Instruments Act, 1881 (NI) — Section 4

Citation : AIR 1994 AP 90 : (1993) 3 ALT 446

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Advocate : Y.B. Tata Rao, for the Appellant; V.S.R. Anjaneyulu, for the Respondent

Judgement

1. Civil revision petition No. 3549/1992 is directed against the order of the learned Second Additonai District Munsif, Vijayawada in I.A. No. 613 of 1992 in O.S. No. 1263 of 1987 allowing the application of the defendant for sending the suit promissory note to a private expert for determining the age of the ink used by the attester and the scribe in the suit promissory note.

2. Although no reasons are given in the order impugned in this revision, evidently the same reasons given by the learned District Munsif on an identical application filed earlier LA. No. 1452 of 1991 which was allowed on 24-1-1992 weighed with him in allowing the present application. In the circumstances, it is necessary to refer to the earlier application for the purpose of ascertaining the reasons.

3. The suit itself was filed by the petitioner-plaintiff on the strength of a promissory note, ex.A1 dated 11-6-1983 alleged to have been executed by the defendant for Rs. 16,300/-. The defendant in his written statement admitted the execution, but plead- ed that the suit promissory note was not supported by consideration; because of the business transactions between the plaintiffs and the defendant's families, the promissory note came to be executed. It was also

further pleaded that the execution of the suit promissory note was in Burrepalem village in Guntur district and therefore, the Court of District Munsif at Vijayawada lacks territorial jurisdiction to have seisin of the matter. The further allegation made was that the attestation was done not at the time of execution, but it was done subsequently in order to confer jurisdiction on the District Munsifs Court at Vijayawada. After the evidence of both sides was over, when the suit was posted for arguments, two interlocutory applications were filed on behalf of the defendant, to recall P.Ws. 2 and 3 -- the attestors -- for further cross-examination. P.W. 2 is no other than the husband of the plaintiff and P.W. 3 is a stranger. The plaintiff figured as P.W. 1. Although both the applications were opposed by the plaintiff, they were allowed by the learned District Munsif. Subsequently as P.W. 2 did not attend the Court for cross-examination, his evidence was directed to be eschewed from consideration. P.W. 3 was further cross-examined pursuant to the order made in the interlocutory application.

4. Thereafter, on 2-12-1991, I.A. No. 1452 of 1991 was filed to send the suit promissory note to a Government Forensic Expert for the purpose of ascertaining the age of the ink used by the attestor and scribe. That application was allowed on 24-1-1992 by the learned District Munsif by a reasoned order. The Government Forensic Expert, it appears, has expressed his inability to undertake the responsibility due to pressure of more important work entrusted to him by the Government. In those circumstances, the second application I. A. No. 613 of 1992 was filed for identical purpose for sending the document to a named private expert at Allahabad.

5. After filing the present revision petition, presumably by way of abundant caution, I.A. No. 18275 of 1992 was filed to condone 189 days' delay in filing the revision petition against the order in I.A. No. 1452 of 1991 (C.R.P. SR No. 61610 of 1992) in O.S. No. 1263 of 1987. On that application, notice was served on the opposite side.

6. The reasons given by the learned District Munsif for allowing the application are that:

".....To the normal vision, the signature of the executant and the hand-writing in the blanks in the body of the pronote are written with the similar ink pen, whereas the signature of the attestor was with a different ink. Since the very contention of the defendant is that the plaintiff has fabricated the signature of the attestor at the time of filing the suit, and the pronote was executed in his village which is not within the territorial jurisdiction of this Court, it became a crucial fact in issue to ascertain the place of execution of the suit pronote, to decide the territorial jurisdiction and the maintainability of the suit. Even the part payment endorsement marked as Ex.A2 on the reverse of the pronote does not disclose where it was executed. So it has to be ascertained that whether the ink used for the signature of the attestor is different from the ink used for the writings in the body of the pronote and the signature of the executant and scribe."

7. The learned counsel for the petitioner contends that the present move on the part of the defendant for obtaining the opinion of the Expert is intended to procrastinate the trial. Even otherwise, no purpose would be served by obtaining the opinion of the Expert as to the age of the ink since it is totally an irrelevant factor for the adjudication of the dispute. In support of his contention, he relies upon the following passage occurring in the decision of the Supreme Court in Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, :

"Finally we may point out that the expert admitted in his evidence that it was only by a chemical test that it could be definitely stated whether a particular writing was of a particular year or period. He also admitted that he applied no chemical tests in this case. So his opinion cannot on his own showing have that value which it might have had if he had applied a chemical test. Besides we may add that Osborn on "Questioned Documents" at page 464 says even with respect to chemical tests 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". In these circumstances the mere opinion of the expert cannot override the positive evidence of the atesting witnesses in a case like this where there are no suspicious circumstances".

8. I am not inclined to agree with the submissions of the learned counsel. The opinion of an expert is relevant u/s 45 of the Indian Evidence Act. It is an accepted principle of law that the science of handwriting is not an accurate one and there is likelihood of errors creeping in, when a handwriting expert gives his evidence and therefore, such evidence should be received with caution. What is the evidentiary value of a handwriting expert and whether or not in conjunction with the other evidence available, the evidence of the expert supports the case of the plaintiff, are matters for decision by the trial judge. The passage from the decision of the Supreme Court extracted supra is not an authority for the proposition that the evidence of the handwriting expert should not be brought on record for the purpose of determining the age of the disputed hand-writing. The opinion of "Albert S. Osborn", quoted with approval by the Supreme Court, was expressed by the learned author in the following context:

"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."

The learned author also expressed the view that:

".....By recording the color as first seen, any observer with good eyesight can on second view answer the question whether an ink is still undergoing a change in color. This kind of an ink examination often furnishes conclusive evidence that a

document is not as old as it purports to be.

.....

It is important to know that the color of the ink on a suspected document, if it is promptly examined, may thus be the means of showing that the document is not genuine. If a writing of this kind purports to have been written long before and it can be shown that the ink has not yet reached its final depth of color, and it actually goes through those changes that are characteristic of ink during the first months or year of its history, it is only necessary to prove this fact to invalidate the document."

9. Hence, the reasons given by the learned District Munsif for allowing the application are perfectly justified in the particular circumstances of the case. C.R.P. No. 3549 of 1992 and C.R.P.S.R. No. 61610 of 1992 therefore, fail and accordingly they are dismissed. No costs.

10. Petitions dismissed.