

APHC010050392010



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

**[3331]**

THURSDAY, THE THIRD DAY OF OCTOBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

**CIVIL REVISION PETITION Nos.1500/2010 AND 1572/2010**

**CIVIL REVISION PETITION NO: 1500/2010**

**Between:**

Bande Siva Shankara Srinivasa Prasad

**...PETITIONER**

**AND**

Ravi Surya Prakash and Others

**...RESPONDENT(S)**

**CIVIL REVISION PETITION NO: 1572/2010**

**Between:**

Bande Siva Shankara Srinivasa Prasad

**...PETITIONER**

**AND**

Ravi Surya Prakash and Others

**...RESPONDENT(S)**

**Counsel for the Petitioner:**

1.T S ANAND

**Counsel for the Respondent(S):**

1.GP FOR HOME

2.Y SRINIVASA MURTHY

3.M V SURESH

**The Court made the following:**

**COMMON ORDER**

Defendant No.6 in the suit filed the above civil revision petitions under Article 227 of the Constitution of India.

2. CRP No.1500 of 2010 is filed against an order, dated 02.03.2010 in I.A.No.1724 of 2009 in O.S.No.07 of 2005, filed under Order XVI and Rules 1 and 6 and Section 151 of CPC, on the file of learned Additional District Judge –cum- Judge, Family Court, Eluru.

3. CRP No.1572 of 2010 is filed against an order, dated 02.03.2010 in I.A.No.1723 of 2009 in O.S.No.7 of 2005 on the file of learned Additional District Judge –cum- Judge, Family Court, Eluru.

4. Deceased respondent No.1/plaintiff filed O.S.No.7 of 2005 against the revision petitioner/defendant No.6 and respondents 2 to 8 for recovery of amount on the strength of promissory note said to have been executed by late Pasala Surya Chandra Rao.

5. By filing a written statement, the defendants, are contesting the suit.

6. The evidence of the plaintiff was completed. The suit is coming for the defendants' evidence. At that stage revision petitioner/defendant No.6 filed I.A.No.1723 of 2009 under Section 45 of the Indian Evidence Act, 1872 to send Ex.A1 promissory note along with the admitted signatures for comparison and verification of the

Government Handwriting expert. He also filed I.A.No.1724 of 2009 under Order XVI Rules 1 and 6 and Section 151 of the Code of Civil Procedure, 1908, to issue summons to 'the Registrar, Visakapatnam Registrar Office, Visakapatnam' for production of Will dated 20.01.1987 said to have been executed by late Pasala Surya Chandra Rao during his lifetime.

7. In the affidavit filed in support of the petition in I.A.No.1724 of 2009, it was pleaded that Sri Pasala Surya Chandra Rao, during his lifetime, executed a registered Will dated 20.01.1987 and the same is under the care and custody of Registrar, Visakhapatnam. In view of the defense in the written statement, *qua* forgery of the signature of late Pasala Surya Chandra Rao on Ex.A1, calling for original Will, in the custody of Registrar, Visakhapatnam, is necessary to send the document for comparison with the signature on Ex.A1.

8. Respondent No.1/plaintiff filed a counter, opposing the interlocutory application.

9. The trial Court, by separate orders, dismissed both applications on 02.03.2010. Aggrieved by the same, the above two revisions are filed. Pending revisions, the 1<sup>st</sup> respondent died and his legal representatives were brought on record as respondents 9 to 11.

10. Heard Sri Y.Srinivasa Murthy learned senior counsel assisted by B.Seetha Ram, learned counsel for the petitioners and Sri M.V.Suresh, learned counsel for respondents 9 to 11, legal representatives of the deceased respondent No.1/plaintiff.

11. Learned senior counsel for the revision petitioner/defendant No.6 would submit that in the written statement, it was specifically contended that the signature of late Surya Chandra Rao on Ex.A1, pronote is forged one. Hence, sending Ex A-1 to the expert for comparison of the signature with the admitted signature of late Surya Chandra Rao, on Will, dated 20.01.1987, is necessary. He would also submit that the document containing contemporaneous signatures of the executants is not necessary for comparison, in view of the reference ordered by the Full Bench *vide* common order dated 18.12.2015.

12. Learned counsel for respondents 9 to 11, on the other hand, would submit that as pointed by the trial Court, suggestions were made to PWs 1 and 2, during cross-examination, admitting the execution of Ex.A1, pronote by late Surya Chandra Rao. He would also submit that the opinion of an expert is corroborative. He would submit that there is a long gap of 15 years from the date of execution of the alleged Will, dated 20.01.1987. There is no illegality in the orders passed by the trial Court. Hence, prayed to dismiss the revisions.

13. The point for consideration in these revisions is:

**Whether the Court below committed any irregularity, warranting interference of this Court under Article 227 of the Constitution of India?**

14. These two revisions and other civil revisions were referred to the Full Bench and the reference was ordered the same is reported in

2016 (2) ALD 1. Before proceeding further, it is appropriate to refer to the reference order of the Full Bench, which reads thus:

“It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however, endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate the expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in **JANACHAITANYA HOUSING LIMITED V/s. DIVYA FINANCIERS**<sup>1</sup>, as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”

15. While ordering the reference, the full bench of the composite High Court observed that the Court must endeavor to impress upon

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<sup>1</sup> 2008 (3) ALT 409 (DB)

the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable to facilitate the expert comparison to the satisfactory standards.

16. However, in the case at hand, it is apparent that Ex.A1, pro-note is dated 21.06.2002, whereas the Will said to have been executed by late Surya Chandra Rao, is on 20.01.1987 i.e fifteen years before the execution of Ex.A1. The Will seems to be in the custody of Sub-Registrar, at Visakhapatnam.

17. In **Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy**<sup>2</sup>, the Hon'ble Apex Court held as under:

““ By now, it is well settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to fact is not regarded as conclusive proof of it.

18. After considering the Constitution of Bench judgment in **Sashi Kumar Banerjee Vs Subodh Kumar Banerjee, AIR 1964 SC 529**, **Murari Lal Vs State of Madhra Pradesh (1980(1) SCC 704** and **Alamgir Vs State (NCT, Delhi) (2003) 1 SCC 21**, the Apex Court observed as follows:

“In our considered opinion, the decisions in **Murari Law (supra)** and **Alamgir (supra)** strengthen the proposition that it is the duty of the Court to approach opinion evidence cautiously while determining its reliability and that the Court may seek independent

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<sup>2</sup> (2019) 14 SCC 220

corroboration of such evidence as a general rule of prudence. Clearly, these observations in Murari Lal and Alamgir do not go against the proposition stated in Shashi Kumar Banerjee that the evidence of a handwriting expert should rarely be given precedence over substantive evidence”

19. Thus, it is clear from the above expression that the opinion of the expert is not conclusive and it should rarely be given precedence.

20. The trial Court, while dismissing the applications, in fact, observed that while making suggestions to PWs1 and 2, the defendants admitted the execution of Ex.A1 promissory note by late Surya Chandra Rao.

21. Article 227 deals with the power of superintendence by the High Court over all subordinate Courts and Tribunals. The power of superintendence conferred upon the High Court by Article 227, is not confined to administrative superintendence only but includes the power of judicial review. This Court has to see that the Courts shall not exceed the power that is conferred on it or exercise power based on extraneous material to pass any order and to keep the subordinate courts within its bounds of jurisdiction.

22. The High Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

- (a) When the inferior court assumes jurisdiction erroneously in excess of power.
- (b) When refused to exercise jurisdiction.
- (c) When an error of law is apparent on the face of record.
- (d) Arbitrary or capricious exercise of authority or discretion.

- (e) Arriving at a finding which is perverse or based on no material.
- (f) A patent or flagrant error in procedure.
- (g) Order resulting in manifest injustice and
- (h) Error both on facts and law or even otherwise.

23. In the cases at hand, this Court doesn't find any perversity in the order or capricious exercise of power by the Trial Court brook interference of this Court under Article 227 of the Constitution of India. The trial Court considered all the aspects and dismissed the applications. This Court does not find any merits in the revisions. Hence, these revisions are liable to be dismissed.

24. Accordingly, these Civil Revision Petitions are dismissed. No costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

Since the suit is of the year 2005, let the Trial Court complete the trial of the suit as expeditiously as possible preferably within six months from the date of receipt of the copy of this court.

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**SUBBA REDDY SATTI, J**

Date : 03.10.2024

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