

(2007) 09 AP CK 0026

Andhra Pradesh High Court

Case No: CRP No. 3120 of 2007

Md. Tajuddin

APPELLANT

Vs

Md. Abdul Rahaman
and Others

RESPONDENT

Date of Decision: Sept. 24, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Evidence Act, 1872 - Section 45, 73

Citation: (2008) 1 ALD 573

Hon'ble Judges: Gopala Krishna Tamada, J

Bench: Single Bench

Advocate: Ali Farooq, for the Appellant; Praveen Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Gopala Krishna Tamada, J.

This civil revision petition is directed against the order, dated 8.5.2007 made in I.A. No. 247 of 2006 in O.S. No. 180 of 1992 on the file of the Junior Civil Judge, Jagtial, by which, the learned Judge allowed the petition filed by the plaintiff u/s 45 of the Indian Evidence Act, 1872 (for brevity "the Act") read with Section 151 C.P.C. ordering to send the disputed signatures of the 3rd defendant on Ex. A1 to the Handwriting Expert for comparison.

2. The brief facts of the case are that the petitioner herein is the 3rd defendant in the suit. On 25.6.1972, an oral agreement was made between the plaintiff, who is the 1st respondent herein, and the defendants 1 to 3 and the father of the 4th defendant to sell the plaint schedule land including the house in favour of the plaintiff. On 9.6.1977, a deed of Agreement of Sale/Acknowledgment deed was executed in favour of the plaintiff as a token of receipt of the monies advanced.

However, as the agreement/ promise was not fulfilled, the plaintiff instituted O.S. No. 180 of 1992 on 16.2.1992 for specific performance of contract of agreement of sale and the defendants filed written statement on 13.7.1993. The plaintiff himself was examined as PW 1 on 4.7.2003 and cross-examined at length from 7.10.2004 to 21.12.2004. Two more witnesses were examined on his behalf. After closure of the plaintiff's evidence, the petitioner herein i.e. the 3rd defendant was examined as DW 1 on 28.3.2006, and was later cross-examined at length. At that juncture, the plaintiff filed I.A. No. 247 of 2006 on 24.7.2006 requesting the Court to send the agreement of sale, dated 9.6.1977 which was marked as Ex. A1, to the expert for comparison of the 3rd defendant's signatures. That petition was originally ordered by the trial Court, against which, the petitioner-3rd defendant filed C.R.P. No. 4691 of 2006, and this Court, while allowing the C.R.P. remitted the matter back to the trial Court for fresh disposal. Thereafter, the trial Court, having heard both the Counsel, passed the impugned order, dated 8.5.2007 observing that the document should be sent to the expert as contemplated u/s 45 of the Act. Aggrieved by the same, the petitioner, who is the 3rd defendant, has filed this civil revision petition.

3. Heard the learned Counsel for both the parties and perused the material placed on record.

In the earlier round of litigation, this Court remanded the matter solely on the ground that the trial Court, without applying its mind, simply ordered the application holding that the suit document should be sent to an expert, and hence, it promoted this Court to send back the matter to the Junior Civil Judge for reconsideration. A perusal of the order impugned in this revision indicates that the trial Court has committed the very same mistake and has not exercised the discretion conferred on it u/s 73 of the Act. Before coming to a conclusion that Ex. A1, deed of agreement of sale, shall be sent to an expert, it is always desirable that the Court has to look into the document and decide whether it is required to be sent to an expert or not. If the trial Court, even after examining the disputed signatures of the 3rd defendant, is unable to come to a conclusion, then it may send the document to the expert for comparison. In this context, it may be apt to refer to Section 73 of the Act which deals with comparison of signature, writing or seal with others admitted or proved. Maybe it is true that the defendants 1 to 3 were set ex parte, but it is not as though their signatures are,, not available in the Court record. In fact,, the very purpose of incorporating Section 73 of the Act is to see that no document need be sent to an expert on a mere filing of an application requesting the Court to send it to an expert. In fact, on this ground alone, this Court allowed the earlier revision filed by the petitioner-3rd defendant specifically directing the trial Court to look into this aspect, but it is obvious that trial Court has failed to exercise its discretion for the second time also.

4. The law is very clear on this aspect and it is only when the trial Court is not in a position to come to a just conclusion, it must feel it necessary to send such

document to an expert. No doubt, the application was filed by the plaintiff i.e., the 1st respondent herein, but the fact remains that the suit has been pending in the trial Court for more than 15 years, and even if the plaintiff filed the application, this Court is not in a position to comprehend that the same does not cause any prejudice to the defendant i.e., the petitioner herein.

5. In the light of the aforementioned discussion, this civil revision petition is allowed and the order impugned in this revision is set aside, and the trial Court is hereby directed to look into the document in accordance with the provisions envisaged u/s 73 of the Act and decide the suit as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. However, it is made clear that if, for any reason, the trial Court is unable to come to a conclusion even after looking into the document, then it is left open for it to send the disputed signatures of the 3rd defendant on Ex. A1 to the Handwriting Expert as contemplated u/s 45 of the Act. No costs.