

THE HON'BLE SRI JUSTICE BATTU DEVANAND

CIVIL REVISION PETITION NO. 175 of 2020

ORDER:

This Civil Revision Petition is directed against the order, dated 15.11.2019 in I.A.No.147 of 2018 in O.S.No.63 of 2013, on the file of the Court of the Principal Senior Civil Judge, Rayachoty, Y.S.R. District.

2) The petitioner is plaintiff and respondent is defendant in the suit proceedings.

3) The facts of the case are that the petitioner filed the suit for specific performance of agreement of sale, dated 12.08.2009 executed by the respondent in his favour. Subsequently, the petitioner filed I.A.No.147 of 2018 in O.S.No.63 of 2013 under Order 13 Rule 10 and under Order 16 Rule 6 of Code of Civil Procedure, seeking to send for the original documents mentioned in the petition for the purpose of comparison of respondent signatures in the suit sale agreement by marking the same in the evidence of the petitioner. Having heard both the learned counsel and upon perusing the material available on record, the Court below dismissed the said interlocutory application. Aggrieved by the same, the present Civil Revision Petition is filed.



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4) Heard Sri V.R. Reddy Kovvuri, learned counsel for the petitioner and Sri K.S. Murthy, learned counsel for the respondent.

5) Leaned counsel for the petitioner submits that the respondent intentionally has taken false pleas, since she is intentionally put her signatures in different styles in different documents at different point of times and the respondent filed Writ Petitions on the file of the Hon'ble High Court of Andhra Pradesh with her signatures in the affidavits and in which she signed differently and thus, the petitioner has obtained certified copies of the same. Learned counsel contends that the respondent is in the habit of writing her signatures differently in different occasions intentionally since she has taken plea of forgery in this suit and in the absence of original signatures of the respondent, he is unable to send the original suit agreement of sale to hand writing expert for comparison and for his opinion.

6) On the other hand, learned counsel for the respondent submits that as the respondent is ill-health lady and that she is not able to move around the offices, her husband went to offices on behalf of her and on her advice and consent, her husband signed the signatures of his wife in affidavits in protecting her

interest in the writ petitions before the Hon'ble High Court and that the signatures in the affidavit are not that of the respondent. Learned counsel submits that the respondent has no objection for the recitals in the documents and her consent is amounts to oral power of attorney. The signatures of the respondent are not admitted signatures and this Court ought to have considered the scope of the suit and interlocutory application. The learned counsel supported the order of the Court below.

7) Having heard the submissions of both counsel and on perusal of the material available on record, it appears that the petitioner filed I.A.No.147 of 2018 in O.S.No.63 of 2013 under Order 13 Rule 10 of Code of Civil Procedure and Order 16 Rule 6 of Code of Civil Procedure praying the Court to send for the original documents mentioned in the petition for the purpose of comparison of defendant signatures in the suit sale agreement by marking the same in the evidence of the plaintiff in the interest of justice.

8) The case of the petitioner is that the respondent is intentionally put her signatures in different styles in different documents at different points of times. As per the petitioner, the respondent filed writ petitions before the High Court of Andhra Pradesh and she filed affidavits along with her



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signatures along with the writ petitions and he has obtained certified copies of the same. The original signatures in affidavits filed along with writ petitions by the respondent or in the custody of the High Court of Andhra Pradesh and unless these documents are not sent, before the Court below he is unable to prove his case on better lines.

9) The learned counsel for the petitioner and the respondent have uploaded the judgments on which they are relying. Interestingly, this Court noticed that both the counsel placed reliance on very same judgments i.e., (1) Judgment of the High Court of Andhra Pradesh in *Pidikiti Sasikala v. Kothamasu Lakshmi Mohan Rao @ Mohan Rao and others*¹ and (2) Judgment of the Hon'ble Supreme Court of India in *Lakshmi and another v. Chinnammal Alias Rayyammal and others*².

10) In *Pidikiti Sasikala's* case (1 supra) the High Court of Andhra Pradesh held at para Nos.12, 13 and 14 as hereunder:

12. The aforesaid provision amply contemplates that the Court has discretion to send for either from its own record or from any other Court. This itself sufficiently narrates the power to make an exercise even in regard to the document or record from other

¹2009 (6) ALD 519

²(2009) 13 Supreme Court Cases 25



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Court and in spite of the fact that those documents are not in the custody of its own.

13. In view of the same, necessarily, it follows that wherever such exercise is to be done, and if warrants, on the facts and circumstances, both the provisions viz., Rule 10(A) of Order 26 of Code of Civil Procedure and Rule 10 of Order 13 of the Code of Civil Procedure have to be read together. That apart, Rule 10(A) of the Order 26 cannot stand alone on its own without falling back to the basic procedural aspect as contemplated under the various other provisions of the Code of Civil Procedure. The entire Code is one and the different provisions made thereunder are only to aid the parties in making a fair trial with ample powers, authority and jurisdiction.

14. In the aforesaid circumstances, it has to be held that the Court while exercising the powers for the purpose of any commission or sending for expert opinion, the same can as well be exercised even in respect of the document which is not in custody of its own.

11) In Lakshmi's case (2 supra) the Hon'ble Apex Court after considering several judgments observed at para No.13 as hereunder:

13.If bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the Court's duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged. We are not unmindful of the fact that the court in the said process would not encourage any fishing enquiry. It

would also not assist a party in procuring a document which he should have himself filed.

12) Now the rival contentions of both parties have to be considered in the light of the findings and observations made by the Hon'ble Apex Court and High Court of Andhra Pradesh in the above judgments relied by both counsel. In the counter filed by the respondent, the respondent took a plea that the respondent is an ill health lady and that she is not able to move around the offices, thereby her husband went to offices on behalf of the respondent and on her advise and consent, her husband signed the signatures in affidavits to protect her interest in the writ petitions before the High Court of Andhra Pradesh. The signatures in the affidavit made in the petition are not of the respondent and the respondent has no objection for the recitals in the documents and her consent is

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13) Having close scrutiny of the averments made by the respondent in her counter, it reveals that in the affidavits filed in the High Court of Andhra Pradesh, her husband signed her signatures as per her consent and it amounts to oral power of attorney. But in the eye of law, there is no such oral power of attorney. It is the settled law that the power of attorney must be in writing only. If the husband of the respondent signed the affidavits on behalf of the respondent under valid General Power of Attorney, the situation may be different. But putting the signatures of the respondent by her husband in the affidavits filed along with the writ petitions before the High Court of Andhra Pradesh amounts to perjury which is punishable under law. However, the contention of the respondent cannot be believed due to the reason that no prudent person will try to commit perjury before the High Court and as such, the opinion of the Court below that no purpose will be served to send the original affidavits of the respondent in writ petitions mentioned in the documents filed in I.A.no.147 of 2018 is not sustainable and not legal.



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14) As rightly observed by the Hon'ble Apex Court in Lakshmi's case (2 supra) that "if bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused and the Court's duty being to find out the truth" and the said observation is squarely applicable in the



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present case. As such, the order of the Court below in dismissing the petition filed by the petitioner is not in accordance with law and liable to be set aside.

15) For the aforementioned reasons, the Civil Revision Petition is allowed and the order, dated 15.11.2019 in I.A.No.147 of 2018 in O.S.No.63 of 2013 on the file of the Court of the Principal Senior Civil Judge, Rayachoty, Y.S.R. District, is set aside.

16) There is no order as to costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.



Dt. 07.12.2020
PGR

JUSTICE BATTU DEVANAND

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