

H. Devaraju Vs. H.R. Halappa

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Court : Karnataka

Decided On : Jun-02-1999

Reported in : 1999(5)KarLJ124

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 75 and 115 - Order 26, Rule 10-A

Appeal No. : Civil Revision No. 1813 of 1996

Appellant : H. Devaraju

Respondent : H.R. Halappa

Advocate for Def. : Sri O. Mahesh, Adv.

Advocate for Pet/Ap. : Sri A.V. Gangadharappa, Adv.

Judgement :

ORDER

1. This revision petition arises out of the order dated 30th May, 1996, whereby the Court below has rejected the petitioner's application I.A. III made in Original Suit No. 519 of 1992. By I.A. III the revision petitioner has prayed for appointment of handwriting expert to compare the disputed signatures with the admitted signatures, of the defendant and to give his opinion with reference to Exs. P. 1 and

P. 2 as according to him it was necessary to do so. The Court below rejected that application taking a view that the Court itself is competent to compare the signatures and there is no need to appoint a handwriting expert. It further observed that the defendant has not denied his signature on the pro note and receipt and there is no question of the same being sent to the handwriting expert. Therefore the Court below rejected that application. Feeling aggrieved by that order the petitioner has come up in this revision.

2. The learned Counsel for the revision petitioner contended that the order impugned does not amount to case decided. He further contended that the Court could itself compare the signatures. Sri Gangadharappa, learned Counsel for the petitioner, submitted that the Court below has erroneously observed that the defendant has not denied his signatures and as such there was no stage for moving the application for expert's evidence. The learned Counsel for the petitioner contended that really if defendant has not denied the signatures and the learned Counsel for the the respondent states that the defendant admits the signature on the pro note then no doubt there may not be any need for appointment of handwriting expert. At this stage, learned Counsel submitted that the defendant does not and did not admit the signature on the pro note or receipt. If this being the position, in my opinion, rejecting of the application for appointment of handwriting expert to examine and determine the disputed signatures with admitted signatures will be tantamount to shutting down the evidence of the parties and disallowing the party to produce the material evidence which he has got the right to produce. As such the order impugned amounts to a case decided for the purposes of Section 115 of the Civil Procedure Code.

3. Expert evidence is expert evidence. Handwriting expert is one who is experienced in science of examining, comparing by scientific methods of signatures and the handwriting. The Court while deciding the case is not competent to act as expert by itself. No doubt, the question as to whether the disputed document was executed by the party by putting his signature has to be decided by Court after considering all the evidence including the expert evidence on the point lead by the parties. But this cannot be a valid ground for refusing a party to lead the expert evidence which party decide to lead and produce. The

Court below, in my opinion, was mistaken in taking a view that the defendant has not denied his signatures in the pleadings and the defendant has denied the plaintiff's case and the execution of pro note and receipt and that is to amount to be denial of signing on pro note and receipt. In this view of the matter, in my opinion, the Court below acted illegally in rejecting the application I.A. III in O.S. No. 519 of 1992. The burden was on the plaintiff to prove the case and the burden to prove execution, of the pro note along with signatures was on the defendant and to prove that he could lead oral evidence of the witnesses as well as expert evidence. If there was any delay in making the application that could be compensated by awarding costs.

4. The revision petition is allowed. The Trial Court is directed to appoint handwriting expert and send the disputed documents to the expert to compare the signatures with the admitted signatures of the defendant or after taking signatures in the presence of plaintiff. While allowing the application it is necessary in the interest of justice to saddle the plaintiff with costs. Thus the revision-petitioner shall pay a sum of Rs. 550/- as costs. The handwriting expert's fee shall be determined by the Trial Court and the same shall be paid by the respondent.