

Md. Tajuddin Vs. Md. Abdul Rahaman and ors.

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Court : Andhra Pradesh

Decided On : Nov-13-2006

Reported in : 2007(3)ALD145; 2008(3)ALT454

Judge : G. Rohini, J.

Acts : [Evidence Act, 1872](#) - Sections 45; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151

Appeal No. : CRP No. 4691 of 2006

Appellant : Md. Tajuddin

Respondent : Md. Abdul Rahaman and ors.

Advocate for Def. : Noushad Ali, Adv. for Respondent No. 1 and ;Mirzasafiulla Baig, Adv. for Respondent Nos. 4 to 6, 8, 9 and 13

Advocate for Pet/Ap. : Ali Farooque, Adv.

Disposition : Petition allowed

**Judgement :
ORDER**

G. Rohini, J.

1. This revision petition is directed against the order dated 29-8-2006 in LA. No. 247 of 2006 in O.S. No. 180 of 1992 on the file of the Court of the Junior Civil Judge, Jagtial.

2. The 3rd defendant in the suit is the revision petitioner. The plaintiff/1st respondent herein filed the suit for specific performance of contract on the basis of an acknowledgement deed dated 9-6-1977, executed by defendants 1 to 3 and father of the 4th defendant by name Abdul Gafoor and also their mother Banu Bee in respect of the suit property. The 3rd defendant filed his written statement denying the execution of the document dated 9-6-1977. During the course of evidence, the plaintiff was examined as P.W. 1 and the suit document dated 9-6-1977 was marked as Ex. A1. It is not in dispute that during the course of cross-examination of P.W. 1, a suggestion was given to P.W. 1 by the Counsel for the 3rd defendant that Ex. A1 was not executed by defendants 1 to 3 and father of the 4th defendant. That apart, while deposing as D.W.1, the 3rd defendant has categorically denied his signature on Ex. A1. Thereafter, while the suit was posted for arguments, the plaintiff filed I.A. No. 247 of 2006 under Section 45 of the Evidence Act, read with Section 151 of the Code of Civil Procedure, to send the signature of the 3rd defendant on Ex.A1, along with admitted signatures available on vakalat, written statement and specimen signatures in his Account with the State Bank of India, Jagtial Branch, to the handwriting expert, Hyderabad, for comparison. Though the said application was opposed by the 3rd defendant, the Court below by order dated 29-8-2006 allowed the application. Aggrieved by the same, this revision petition is filed by the 3rd defendant.

3. I have heard the learned Counsel for both the parties and perused the material on record.

4. Admittedly, the application in question was filed at the fag-end of the proceedings when the suit was coming up for arguments. In the circumstances, apart from merits, an objection was raised by the defendants that the application filed at a belated stage cannot be entertained. The Court below while relying upon a decision of this Court in Medikonda Rama Swarajyalakshmi v. Posina Sathyanarayana : 1999(1)ALD210 , held that such a petition cannot be dismissed

on the ground of delay and, accordingly, allowed I.A. No. 247 of 2006.

5. There can be no dispute about the ratio laid down in the above case that an application seeking opinion of a handwriting expert with regard to the signature on the disputed document cannot be dismissed on the ground of delay alone. However, as held by the Supreme Court as well as this Court in a catena of decisions the opinion of an expert with regard to the signature or writing in the disputed document is not conclusive, but it is only a piece of evidence, which requires to be taken into consideration along with other evidence produced by the parties, and ultimately it is for the Court to arrive at its own conclusion on appreciation of the entire evidence available on record vide *Fakruddin v. State of M.P.* AIR 1967 SC 1326; *State (Delhi Administration) v. Pali Ram* : 1979 CriLJ17 and *Murarilal v. State of M.P.* AIR 1980 SC 531.

6. In the circumstances, and particularly since both the parties to the suit have already produced their evidence, it is the duty of the Court, on application of mind to the evidence already produced, to arrive at a conclusion, whether it is necessary at that stage to send the disputed document to an expert for comparison with the admitted signature. The order under revision shows that the Court below failed to adopt such course, but allowed the application only on the ground that mere delay cannot be a ground to dismiss the application.

7. As expressed above, since the application for sending the disputed signature to an expert for comparison with admitted signatures cannot be ordered as a matter of course, but requires to be considered keeping in view the facts and circumstances in a given case and, since, admittedly, the Court below failed to exercise such discretion, the impugned order is liable to be set aside.

8. Accordingly, the impugned order dated 29-8-2006 in I.A. No. 247 of 2006 in O.S. No. 180 of 1992 is set aside and the matter is remitted back to the Court below to consider I.A. No. 247 of 2006 afresh and pass appropriate orders in accordance with law.

9. The civil revision petition is accordingly allowed. No costs.

