HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL REVISION PETITION No.1990 OF 2024

ORDER:

Heard Mr. Vedula Srinivas, learned Senior Counsel representing Ms. Vedula Chitralekha, learned counsel for petitioner Nos.2 to 5 and Mr. Brahmadandi Ramesh, learned Senior Counsel representing Mr. G.L. Narsimha Rao, learned counsel for the respondent.

2. This revision is filed challenging the order dated 03.05.2024 passed by learned Principal District Judge, Karimnagar in I.A. No.578 of 2024 in O.S. No.171 of 2015 dismissing the petition filed by the petitioners - defendants under Section - 45 of the Indian Evidence Act, 1872 (for short 'Evidence Act').

3. The petitioners herein are the defendants in O.S. No.171 of 2015, while the respondent is the plaintiff. The respondent herein - plaintiff filed the said suit vide O.S. No.171 of 2015 against the petitioners herein for declaration of title declaring him as owner, possessor over the suit schedule property i.e., land measuring Ac.0.15¼ guntas (1845 square yards) in Survey No.1031, situated at Ramnagar Area, Karimnagar, and cancellation of document bearing

No.187 of 2015, dated 16.01.2015 executed by defendant No.1 in favour of defendant Nos.2 to 5 as null and void and not binding on the plaintiff and for a consequential perpetual injunction restraining the defendants from interfering with her possession over the suit schedule property.

4. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in O.S. No.171 of 2015.

5. During pendency of the said suit, the defendants filed an Interlocutory Application vide I.A. No.578 of 2024 in O.S. No.171 of 2015 under Section - 45 of the Indian Evidence Act, 1872 to send the disputed signature Nos.1 and 2 on Ex.B7 - written statement in O.S. No.741 of 1975 on the file of the District Munsiff at Karimnagar, to hand-writing expert at Central Forensic Laboratory, Ramanthapur, Hyderabad, for his opinion with comparison of admitted signatures from Exs.B20 and B21 - written statement in O.S. No.202 of 1974 on the file of the District Munsiff, Karimnagar and written statement in O.S. No.203 of 1974 on the file of the very same Court, respectively, contending as follows:

i) The grandfather of defendant No.5, namely Awaz Bin Musallam, filed a suit in O.S. No.219 of 1994 against the plaintiff and one Ms. Shameemunisa Begum;

ii) In the said plaint, his grandfather took a categorical plea that defendant No.2 i.e., Hussain Bin Awaz got managed to file written statement on his behalf by forging his signatures in O.S. No.741 of 1975. To prove the said fact, the written statement in O.S. No.741 of 1975 got marked as Ex.B7 may be sent to expert's opinion for comparison of the signatures with that of admitted signatures of defendant No.5's grandfather made in the written statements filed in O.S. Nos.202 of 1974 and 203 of 1974.

6. The plaintiff filed counter opposing the said petition contending as follows:

i) The defendants did not challenge the judgment and decree in O.S. No.741 of 1975;

ii) The written statement filed in O.S. No.741 of 1975 cannot be questioned now, and the defendants plaintiff has no *locus standi* to dispute the same;

iii) The trial Court cannot come to a conclusion regarding genuineness of signatures on written statement or in his pleadings, nor did defendant No.5 depose in his evidence anything about the proceedings in O.S. No.202 of 1974 and 203 of 1974.

7. Vide order dated 03.05.2024 learned trial Court dismissed the aforesaid I.A. No.578 of 2024 observing thus:

i) By filing the petition, the defendants are seeking to examine the signatures of Awaz Bin Mussallam on written statement filed by him on 14.11.1975 in O.S. No.741 of 1975, which signature they are disputing with that of Awaz Bin Mussallam's other two purported signatures made on 04.09.1974 in two written statements in O.S. No.202 of 1974 and 203 of 1974;

ii) If the purported signature is disputed by one party and is affirmed as correct by another party, such disputed signature can be compared only with admitted specimen signatures;

iii) According to the defendants, the specimen signatures were made by Awaz Bin Mussallam in written statements

in O.S. Nos.202 of 1974 and 203 of 1974 filed in the year 1974 itself. However, there is no record to show that the said signatures were admitted signatures of Awaz Bin Mussallam;

iv) Both the disputed and admitted signatures were all made on written statements purportedly filed by Awaz Bin Mussallam in three different suits in and around 1974-75.

v) Both sets of signatures are all available on photocopies of written statements which are certified copies obtained from the Court record from the respective suits. Photocopies of documents are not fit for comparison and that too they pertain to nearly 50 years old documents;

vi) After a gap of 50 years, without there-being any basis, the signatures cannot be sent for comparison.

8. In the light of the aforesaid rival submissions, it is relevant to note that respondent - plaintiff filed the aforesaid suit in O.S. No.171 of 2015 for declaration to declare him as owner of the suit schedule property, that he is in possession of the suit schedule property and for cancellation of document No.187 of 2015, dated 16.01.2015 executed by defendant No.1 in favour of defendant Nos.2

to 5 as null and void and also for perpetual injunction. During pendency of the said suit, the defendants filed the aforesaid I.A. No.578 of 2024 under Section - 45 of the Evidence Act to send the disputed signature Nos.1 and 2 on Ex.B7 - written statement in O.S. No.741 of 1975 on the file of the District Munsiff at Karimnagar, to hand-writing expert at Central Forensic Laboratory, Ramanthapur, Hyderabad, for his opinion with comparison of admitted signatures from Exs.B20 and B21 - written statement in O.S. No.202 of 1974 on the file of the District Munsiff, Karimnagar and written statement in O.S. No.203 of 1974 on the file of the very same Court, respectively.

9. There is no dispute that the trial Court has power to compare the signatures of the party. At the same time, the object of Section - 45 of the Evidence Act i.e., expert opinion has to be considered by the trial Court.

10. In the light of the same, it is relevant to extract Sections - 45 and 73 of the Evidence Act and the same is as under:

> "**45. Opinions of experts.**—When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting 2 [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 3 [or in questions as to identity of handwriting] 2

[or finger impressions] are relevant facts. Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

"73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or

> proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.
>
> The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.
>
> This section applies also, with any necessary modifications, to finger-impressions."

11. Section 45 of the Evidence Act, *inter alia*, provides that the Court can call for evidence of experts to form an opinion regarding the genuineness of signatures and handwriting which are relied on by one party and disputed by another party. It is also relevant to note that the power to seek expert opinion under Section 45 of the Evidence Act is discretionary and depends on facts of each case. The Courts under Section 73 of the Evidence Act can themselves compare the signatures or handwriting. However, the Hon'ble Supreme Court has time and again cautioned that Courts cannot act as experts in all the cases. Unless it is glaringly clear that the signatures are same or are different, the Courts should normally call for an opinion from the experts.

12. In **State (Delhi Admn.) v. Pali Ram**[1], the Apex Court held that prudence requires that a judge shall obtain expert opinion in the matters of comparison of handwriting. The relevant paragraph is extracted below:

> "30. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. **It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert**."

13. In **Ajit Savant Majagvai v. State of Karnataka**[2], the Apex Court held that where there is even slightest of doubt in the minds of the judge while comparing the admitted and disputed

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[1]. (1979) 2 SCC 158
[2]. (1997) 7 SCC 110

signatures, such signatures shall be sent for expert opinion under Section 45 of the Evidence Act. The relevant paragraphs are extracted below:

> "37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court, to give his specimen writing or fingerprints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.
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> **38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom**

> **of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act. [See: State (Delhi Admn.) v. Pali Ram [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14**]."

14. In **Thiruvengadam Pillai v. Navaneethammal**[3], the Apex Court observed that it is risky to arrive at a conclusion regarding signatures and handwriting without an expert opinion. The relevant paragraph is extracted below:

> "16. **While there is no doubt that Court can compare the disputed handwriting/ signature/ finger impression with the admitted handwriting/signature/finger impression, such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky.** When it is said that there is no bar to a Court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed

[3]. (2008) 4 SCC 530

> finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the Court is in a position to identify the characteristics of fingerprints, the Court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the Court should not hazard a guess by a casual perusal."

15. In **Ajay Kumar Parmar v. State of Rajasthan**[4], the Apex Court held that, the Courts while dealing with handwriting or signatures cannot itself act as an Expert. The relevant paragraph is extracted below:

> "28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court

[4]. (2012) 12 SCC 406

> from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision."

16. In view of the dicta in the above decisions, it can be said that the Courts shall normally seek expert opinion when they are

posed with a situation where they have to compare admitted and disputed signatures. The Courts can refuse expert opinion only when no doubt exists regarding the genuineness of the signatures after comparison of the admitted and disputed signatures. In cases where even a slightest doubt exists, the Courts shall send the admitted and disputed signatures for expert opinion under Section - 45 of the Evidence Act.

17. Thus, according to the petitioners, the grand-father of defendant No.5, late Awaz Bin Musallam, filed a suit vide O.S. No.219 of 1994 to set aside the judgment and decree dated 14.11.1975 in O.S. No.741 of 1975 passed by the District Munsiff, Karimnagar, and to declare the judgment and decree in O.S. No.753 of 1981 passed by the very same Court as null and void and not binding on him. In the said plaint, he has specifically mentioned that he did not file written statement in O.S. No.741 of 1975 and he never engaged any lawyer. His signature was forged on the said written statement. According to him, his signature was forged, managed to get the decree in O.S. No.741 of 1975. Thus, sending the disputed signature Nos.1 and 2 on Ex.B7 - written statement in O.S. No.741 of 1975 on the file of the District Munsiff at Karimnagar, to the hand-writing expert at

Central Forensic Laboratory, Ramanthapur, Hyderabad, for opinion of hand-writing expert with the comparison of the admitted signatures from Exs.B.20 and B.21 - written statements in O.S. No.202 and 203 of 1974 on the file of the District Munsiff, Karimnagar, respectively, all from the original records of the said Court.

18. There is no dispute with regard to the filing of the aforesaid suits and decrees passed therein. However, O.S. No.219 of 1994 was dismissed as not pressed on 03.11.1995. It is also not in dispute that the grandfather of defendant No.5 in the plaint in O.S. No.219 of 1994 specifically pleaded that he never engaged a lawyer in O.S. No.741 of 1975 and never filed written statement in the said suit and his signature was forged. Placing relying on the same, the defendants filed the aforesaid application vide I.A. No.578 of 2024 in O.S.No.171 of 2015.

19. The trial Court dismissed the said application on the ground that the specimen signatures of the grandfather of defendant No.5 are not available. It is relevant to note that the signatures in Exs.B20 and B21 - written statements in O.S. Nos.202 and 203 of 1974 are of the year 1974 and the disputed signature Nos.1 and 2 in Ex.B7 - written statement in O.S. No.741 of 1975 are of the year

1975. Referring to the same, Mr. Vedula Srinivas, learned Senior Counsel appearing on behalf of the petitioners - defendants would contend that time gap between two signatures is only one year. Therefore, there would not be much variation in the signature of late grandfather of defendant No.5.

20. As rightly contended by Mr. Vedula Srinivas, learned Senior Counsel, the suits in O.S. Nos.202 and 203 of 1974 are of the year 1974, while the suit in O.S. No.741 of 1975 is of the year 1975, so the difference is only one year between the said suits. Thus, on the said ground, the application filed by the defendants cannot be dismissed.

21. The trial Court also dismissed the said application on the ground that the files are not available and the Photostat copies of the written statements which are certified copies obtained from the Court record and, therefore, Photostat copies of documents are not fit for comparison, that too they pertain to nearly fifty (50) years old documents. It is relevant to note that the defendants have obtained certified copies of the aforesaid documents i.e., Ex.B7 - written statement in O.S.No.741 of 1975 and Exs.B20 and 21 - written

statements in O.S. Nos.202 and 203 of 1974 from the Court of the District Munsiff, Karimnagar. Thus, the said original documents must be available in the said Court. Therefore, the trial Court cannot dismiss the said application filed by the defendants on the said ground.

22. The trial Court also dismissed the said application on the ground that they have filed the application after gap of fifty (50) years. Therefore, without there being any basis, the documents cannot be sent for comparison. In the light of the same, it is apt to note that the defendants specifically stated the reasons in the affidavit filed in support of petition in I.A. No.578 of 2024 for sending the documents for comparison of signatures of the grandfather of defendant No.5 with his admitted signatures. Therefore, learned trial Court cannot say that the petitioners 2 to 5 filed the said application without any basis. In fact, the suit in O.S.No.171 of 2015 is filed for declaration.

23. With regard to delay, a Division Bench of the High Court of Andhra Pradesh at Hyderabad in **M/s. Janachaitanya Housing Ltd., Ameerpet v. M/s. Divya Financers**[5] held that the Court cannot lay down any hard and fast rules controlling the discretion of the Court to send the disputed documents/writings for the opinion of the

[5]. AIR 2008 AP 163

expert or to examine him in support of such opinion. On sending the document to handwriting expert and on receiving report, parties, on showing sufficient cause, may call upon the court to permit them to examine hand-writing expert or any witness in support or rebut the said opinion. Thus, no time could be fixed for filing applications under Section - 45 of the Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case. The said principle was also followed in **Kaveti Sarada v. Vemineni Hymavati**[6] and **Guru Govindu v. Devarapu Venkataramana**[7]

24. In is pertinent to note that an application under Section – 45 of the Evidence Act can be filed at any time. But the defendants have to mention the basis for which they are filing the said application seeking expert's opinion. As discussed above, in the present case, the defendants have specifically mentioned the reasons for sending the aforesaid documents containing the signatures of grandfather of defendant No.5 to the expert opinion for comparison. The suit filed

[6]. AIR 2006 (NOC) 1406
[7]. AIR 2006 AP 371

by respondent/plaintiff in O.S.No.171 of 2015 is for declaration and he is relying on the decree and judgment in O.S.No.741 of 1975. Without considering the said aspects, purport of Section - 45 of the Evidence Act and the principle laid down by the Apex Court and this Court, learned trial Court dismissed the said application filed by the petitioners 2 to 5. Therefore, the impugned order is liable to be set aside.

25. In the light of the aforesaid discussion, the present Civil Revision Petition is allowed, setting aside the impugned order dated 03.05.2024 passed by learned Principal District Judge, Karimnagar in I.A. No.578 of 2024 in O.S. No.171 of 2015. I.A. No.578 of 2024 filed by the petitioners herein - defendants in O.S. No.171 of 2015 is allowed directing the trial Court to take steps for sending the documents mentioned in I.A. No.578 of 2024 to the expert so as to obtain opinion from him. Liberty is granted to the plaintiff and the defendants to take all the pleas and grounds which they have raised before this Court and also make their submissions with regard to reliability of documents, change of the signature, expert opinion etc. and it is for the trial Court to consider the same. In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in this revision shall stand closed.

K. LAKSHMAN, J

5th August, 2024
Mgr/vvr.