

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.1306 of 2024

Between:

Varri Jayalakshmi and another

..... PETITIONERS

AND

Badiga Eswara Rao and 2 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **11.11.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
+ CIVIL REVISION PETITION No.1306 of 2024

% 11.11.2024

Varri Jayalakshmi and another

....Petitioners

Versus

\$ Badiga Eswara Rao and 2 others

....Respondents

! Counsel for the Petitioners: Sri Lalith,
Rep. Sri Mangena Sree Rama Rao

^ Counsel for respondents : Ms. K. Aruna Sri Satya,
Rep. Sri V. V. Ravi Prasad

< Gist :

> Head Note:

? Cases Referred: --

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
CIVIL REVISION PETITION No. 1306 of 2024

JUDGMENT:

Heard Sri Lalith, learned counsel, representing Sri Mangena Sree Rama Rao, learned counsel for the petitioners and Ms. K. Aruna Sri Satya, learned counsel, representing Sri V. V. Ravi Prasad, learned counsel for the respondents.

2. The petitioners are the defendants No. 1 and 2 respectively in O.S. No. 52 of 2015 pending in the court of Additional District Judge, Visakhapatnam.

3. The plaintiffs/respondents filed O.S.No.52 of 2015 on the file of the XI Additional District Judge, Visakhapatnam for a specific performance of contract pursuant to the sale agreement dated 05.10.2012 said to have been executed by the defendants of the suit in favor of the plaintiffs, along with other prayers. In the said suit, the defendants/petitioner filed written statement denying *inter alia* the execution of the agreement of sale, which was said to be a forged document. The signatures of the defendant/petitioner No 2 were denied. In the said suit, the Petitioner filed I.A.No.426 of 2021 to compare the petitioner No.2's signature on the said agreement of sale. The application was rejected on 30.08.2022. Challenging the order dated.30.05.2022, the petitioners filed CRP No.2305 of 2022, which was disposed of vide judgment dated 22.11.2022. This Court after considering the contention of the petitioners that the 2nd petitioner/2nd defendant therein was a government employee, left it open to the

petitioners/defendants to file appropriate application by placing authenticated documents containing admitted signatures of petitioner No.2/defendant No.2 before the trial Court. It was further provided that if such an application was filed along with authenticated documents containing admitted signatures, the learned trial Court shall consider and dispose of the same in accordance with law, after giving an opportunity to the plaintiffs. The operative part of the judgment dated 22.11.2022 reads as under:

“13. However, in view of the contention of the learned counsel appearing for the petitioners that petitioner No.2/defendant No.2 is government employee, it is left open to the petitioners/defendants to file appropriate application by placing authenticated documents containing admitted signatures of petitioner No.2/defendant No.2 before the trial Court. If such an application is filed along with authenticated documents containing admitted signatures, the court below shall consider and dispose of the same in accordance with law, after giving an opportunity to the plaintiffs.

14. With the above direction, this civil revision petition is disposed of at the stage of admission. No costs.”

4. Thereafter, the petitioners filed another application being unnumbered I.A. with GR No.3230/06.10.23 for comparison of disputed signatures on the agreement of sale with the prayer that the signature of the 2nd defendant/2nd petitioner be taken in open Court and be send for comparison. The prayer in unnumbered I.A reads as under:

“For the reasons stated in the accompanying affidavit the petitioners most humbly prays that this Honorable Court may be pleased to order to send the suit document No.1 i.e., unregistered sale agreement dated 5-10-2012, to the Hand writing expert, by comparing the petitioner’s admitted signatures will be obtain in open court, in the interest of justice, equity and good conscience or

otherwise the petitioners will be suffer huge and irreparable loss and there be will be miscarriage of justice.”

5. The said application has been rejected on 7/5/2024at the stage of numbering. The rejection is on the ground that once the plea of the petitioner was that he never signed in Telugu and always signed in English, the sign on Ex.A1 being in Telugu no useful purpose will be served, since he signs in English only as contended by him .

6. Challenging the order dated 7/5/2024the present CRP has been filed under Article 227 of the Constitution of India.

7. Sri Lalitha Learned counsel for the petitioners submits that the learned trial Court erred in rejecting the application. He submits that the signature of the defendant/petitioner No 2 should have been taken in the open Court and sent for comparison with the disputed signatures on Ex A1.

8. Ms. K. Aruna Sri Satya, for the plaintiff-respondents submits that there is no illegality in the rejection of the application. She submits that the direction given by this Court in the previous CRP No.2305 of 2022 was the liberty to file appropriate application by placing authenticated documents containing the admitted signatures of the 2nd petitioner/2nd defendant, but instead of filing the application supporting with such documents, the petitioner applied for comparison of signature, on different ground, which was not taken in their previous application. Consequently, there is no illegality in the impugned order.

9. In reply learned counsel for the petitioners submits that the petitioner No.2 is not an habituate to put his signatures in Telugu and as such it

was not possible for him to file authenticated documents containing his Telugu signatures. He submits that such a plea was taken in the petitioner's affidavit in support of application vide 4 thereof.

10. I have considered the aforesaid submissions as advanced by the learned counsels for the parties and perused the material on record.

11. Admittedly, the petitioner's first application I.A no 426 of 2021 for comparison of the signatures was rejected on 30.08.2022. Civil Revision Petition filed against the said order was disposed of with directions as quoted above. The defendant/petitioner No 2 was set at liberty to file appropriate application by placing authenticated documents containing the admitted signatures of the petitioner No.2/defendant No.2 since he was a Government employee. But any such application for comparison, the petitioners did not file. Instead, an application was filed to take the signature in the open court and sent for comparison with the disputed signature. The application was also filed on a different ground that the 2nd petitioner was not habituated to sign in Telugu vide para 4 of the affidavit in support of the present application which reads as under:

"4. I further submit that the signature shown in the alleged suit document absolutely not belongs to me, with a view to harass and for wrongful sign the petitioners filed the above suit. My signature in the alleged suit document No.1 dated 05.10.2012 forged and fabricated one, hence I filed an application under section 45 of Indian Evidence Act, the said application dismissed by this court and I preferred civil revision petition No.2305 of 2022 on the file of the Hon'ble High Court of Andhra Pradesh. The Hon'ble High court directed me to file appropriate application by placing authenticating documents containing my admitted signatures. I clearly submitted that I am not

an habituate to put my signatures in Telugu, as such it is not possible for me to file authenticated documents containing with my Telugu signatures.”

12. On specific query of the court, learned counsel for the petitioner could not point out if such a plea, as in para 4 aforesaid, was taken in the written statement or/and in I.A.No.426 of 2021. Learned counsel for the respondents submits that no such plea was taken previously.

13. I have gone through the contents of the written statement and the I.A.No.426 of 2021, on record, but do not find any such plea that the petitioner No.2 was not an habituate to put his signatures in Telugu. The repeated plea was that the signature on suit document i.e., the sale agreement dated 05.11.2012 was forged and fabricated. I have no hesitation to hold that such a plea, raised for filing application for comparison of signatures, second time, is an afterthought, plea after the order passed by this court in C.R.P.No.2305 of 2022.

14. It is well settled in law that the principles of *res judicata* apply even at different stages of the same suit. Once the plea, as aforesaid, was not taken in the previous application which plea, it is also submitted by the learned counsel for the petitioners, was available but was not taken such a plea, could legally not be taken in 2nd application. The liberty was granted by this Court for filing appropriate application by placing authenticated documents. Such an application could be filed only in terms of the liberty granted which was not done.

15. The application filed was not in terms of the liberty granted by this Court in CRP No.2305 of 2022. Consequently, the same has rightly been rejected.

16. I do not find any illegality in the impugned order, dated 07.05.2024.

17. The Civil Revision Petition is dismissed.

18. The suit is of the year 2015. The learned trial court shall make endeavour to decide the same expeditiously without granting unnecessary adjournments.

19. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 11.11.2024

Dsr

Note:

LR copy to be marked

B/o

Dsr