HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE FIFTEENTH DAY OF JUNE

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 811 OF 2018

Between:

1. MANDAVA RATNA GIRI RAO S/O.Gangadhar Rao, Occ-Agriculturaist, R/O.Movva Village of Movva Mandal, Krishna

...PETITIONER(S)

AND:

1. MANDAVA SUGUNAVATHI W/O.Koteshwara Rao, age-70 years, Occ-Agriculturist, R/O.Movva Of Movva Mandal, Krishna

...RESPONDENTS

Counsel for the Petitioner(s): VELAGAPUDI V N RAO

Counsel for the Respondents: GHANTASALA UDAYA BHASKAR

The Court made the following: ORDER

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.811 of 2018

Between:

Mandava Ratna Giri Rao,
S/o Gangadhar Rao

....Petitioner

A n d

Mandava Sugunavathi,

W/o Koteswara Rao

....Respondent

DATE OF ORDER PRONOUNCED : 14.06.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

1.	Whether Reporters of Local Newspapers may be allowed to see the order?	Yes/No
2.	Whether the copy of order may be marked to Law Reporters/Journals?	Yes/No
3.	Whether Her Ladyship wish to see the fair copy of the order?	Yes/No

B. S. BHANUMATHI, J

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.811 of 2018

% 14.06.2022

Between:

Mandava Ratna Giri Rao, S/o Gangadhar Rao,
R/o Movva village of Movva Mandal,
Krishna District.

….Petitioner

A n d

Mandava Sugunavathi, W/o Koteswara Rao,

R/o Movva of Movva Mandal, Krishna Dist.

….Respondent

! Counsel for the petitioner : Sri P.Kiran

^ Counsel for the Respondent : Sri G.Uday Bhaskar

< Gist:

> Head Note:

? Cases referred:

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

C.R.P.No.811 of 2018

ORDER:

This revision petition is filed by the plaintiff against the order dated 01.02.2018 in I.A.No.60 of 2018 in O.S.No.10 of 2010 on the file of the court of learned Senior Civil Judge, Avanigadda, which was filed under Order 16 Rule 1 CPC to summon the witness.

2. The suit is filed for specific performance of an agreement of sale, which is denied by the respondent/defendant. The plaintiff filed the petition to summon the expert as a witness on his behalf to speak the contents of the report, since a report was submitted by the expert on examination of the disputed signatures as per the directions of the said Court in I.A.No.309 of 2010 and as per the report of the expert, the disputed signature is found to be that of the defendant.

3. The petition was opposed by the respondent/defendant by filing a counter stating that it is well established principle of law that the evidence of a hand writing expert is not conclusive and that the expert gave his opinion in the month of April, 2013, but after lapse of more than four years, this petition was filed to drag on the matter.

4. After hearing both parties, the trial Court dismissed the petition observing that either to prove or fail is the burden of the plaintiff in the suit and that calling for the expert to prove the contents of a written report is hit by Section 22 of the Indian Evidence Act (in short 'the Act') as oral admissions with regard to contents of document are not relevant under Section 22 of the Indian Evidence Act and therefore the application is misconceived and must fail.

5. Having aggrieved by the order, the revision petition was filed contending that very purpose of sending the document for opinion of an expert would be defeated when the expert is not summoned to give evidence about the report, since the evidence is crucial to prove the case of the petitioner in the suit, but the trial Court erroneously dismissed the application for summoning the expert by failing to exercise its jurisdiction vested in it and therefore the order of the trial court requires to be revised by this Court in exercise of powers of revision.

6. Heard Sri P.Vinod Kumar, learned counsel representing Sri Velagapudi V.N.Rao, learned counsel for the revision petitioner. No representation for the respondent.

7. Since the trial Court dismissed the petition mainly on the ground of impermissibility of evidence of expert as per Section 22 of the Act, it is pertinent to refer the said provision, which reads as follows:

> **When oral admissions as to contents of documents are relevant.**—Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

8. Chapter II of Part I of the Act titled as- “of the relevancy of facts” deals with relevancy of facts. Section 5 to 55 of the Act deals with facts which are relevant to prove. In this regard it is pertinent to mention that as per Section 5 evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereafter declared to be relevant and of no others. Its explanation says that this Section shall not enable any person to give evidence of a fact which he is disentitled to prove for any provision of law relating to civil procedure. Section 3 of the Act deals with sense in which various words and expressions are used in the Act.

Thus it dealt with what is 'Relevant' and what is 'Facts in issue'. The contours of the field of evidence that can or cannot be given is prescribed in Section 5 of the Act. Sections 6 to 55 of the Act deal with various facts which are relevant. Therefore evidence can be given of facts in issue and relevant fact and of nothing else.

9. All the provisions in Chapter-II must be harmoniously read together. None of them is inconsistent with the others, rather they are co-existent. Section 45 of the Evidence Act specifies that opinion of an expert is relevant, which reads as follows:

> **Section 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.

10. Therefore, opinion of expert is relevant and evidence can be given of the opinion of an expert.

11. As per Section 3 of the Act, evidence means and includes oral evidence and documentary evidence as defined therein. Oral evidence is defined as all statements which the Court permits or requires to be made before it by witness, in relation to matters of fact under enquiry. Documentary evidence is defined as all documents including electronic records produced for the inspection of the Court. Thus, evidence of opinion of an expert can be given in the form of either oral or documentary or both.

12. Section 3 of the Act says a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Therefore, like any other evidence, opinion of expert is also under scrutiny of

court for it to be considered as proved. The opinion of expert is never regarded as gospel truth.

13. When expert gives oral evidence of his opinion before court or Commissioner as the case may be, on oath, it is substantial evidence and can be subjected to cross examination for its evaluation i.e to determine its worthiness to determine whether a fact or fact in issue is proved. If report alone is before a Court, credit worthiness of the opinion cannot be tested. Thus, it may be necessary to examine the expert.

14. The trail Court misread and misapplied the provision under Section 22 of the Act. What is not relevant under Section 22 of the Act is oral admission as to contents of a document, except under the circumstances indicated therein. Contents of a document and oral admission of contents of a document are different. Proof of contents of document through the person who is the author of the document is not prohibited under Section 22 of the Act. There is a subtle difference between the contents of a document and an oral admission as to contents of a document. For example an expert gives a written report of his opinion that a questioned signature is made by the same person who made the admitted signature, and makes an admission that he had given the said opinion. As per Section 22, such admission is not relevant and the same cannot be given in evidence unless it falls within the scope of circumstances of exception provided in the later part of the same section or admissible under any other provision. But, evidence of contents of written opinion can be given. To understand it more clearly, one can draw analogy from the concept of 'hearsay' evidence. Thus, the trial Court went wrong in applying Section 22 of the Evidence Act to the present case in disallowing the relief claimed by the petitioner.

15. As opinion of an expert is relevant under Section 45 of the Evidence Act as indicated above, the petitioner can be permitted to lead such evidence.

However, instead of summoning the expert as a witness before the trial Court, the petitioner is permitted to get the evidence of the expert recorded through a Commissioner being appointed by the trail Court on payment of necessary expenses fixed by the trail Court. As such, the impugned order is liable to be set aside.

16. In the result, the revision petition is allowed setting aside the order in I.A.No.60 of 2018 in O.S.No.10 of 2010 on the file of the court of learned Senior Civil Judge, Avanigadda. However, instead of summoning the expert as a witness before the Court, the petitioner is permitted to get the evidence of the expert recorded through a Commissioner being appointed by the trail Court on payment of necessary expenses fixed by the trail Court.

Pending miscellaneous petitions, if any, shall stand closed.

B.S.BHANUMATHI, J

14th day of June, 2022

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