

CIVIL REVISION

Present :

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 25.08.2010

C.O. No. 2688 of 2009

Narayan Chowdhury @ Karmakar.

Versus

Sanjoy Kumar Mondal and Ors.

Points:

Expert opinion- Party prayed for opinion of hand writing expert- Whether Court would himself compare the disputed signature –Evidence Act, 1872 S.45

Facts:

Defendant filed an application for sending the notice alleged served on him denying his signature to the handwriting expert for opinion. Court himself compared the said signature with the other signatures on record and rejected the said application

Held:

Trial Judge has adopted himself as an expert. He had compared the signature appearing on the A/D card along with other admitted signatures appearing on the documents such as vakalatnama, written statement, etc. and then he had come to a conclusion that there was no justification to allow the prayer of the defendant and to send the signatures of the defendant for examination by a handwriting expert. This is contrary to the provisions of the Indian Evidence Act. The learned Trial Judge has exceeded his jurisdiction by taking the task of the handwriting expert by making a comparison himself.

The order impugned, therefore, cannot be supported. It is set aside. The petition filed by the defendant for appointment of a handwriting expert stands allowed. The learned Trial Judge shall proceed with the suit from that stage of sending the particulars to the handwriting expert for opinion. He shall fix the period within which the handwriting expert shall send his report to the learned Trial Judge. Thereafter, on receipt of the report he shall proceed with the suit in accordance with law. Para 3

For the Petitioner: Mr. P. P. Roy.

For opposite parties: Mr. Debabrata Acharyya, Mr. Prabir Adhya.

Prasenjit Mandal, J.: This application is at the instance of the defendant/petitioner and is directed against the order no.14 dated July 23, 2009 passed by the learned Civil Judge (Junior Division), Tehatta, District – Nadia in Title Suit No.86 of 2008. By the impugned order, the learned Civil Judge (Junior Division) has rejected the petition filed by the defendant.

2. The short fact is that the plaintiffs filed the suit for ejectment under Section 106 of the Transfer of Property Act. Notice had been duly served upon the defendant and then the suit as filed. In that suit, the defendant appeared and filed a written statement denying that he had received any notice under Section 106 of the Transfer of Property Act and that he had signed on the A/D card. Thereafter, the defendant filed an application for verification of the signature appearing on the A/D card by a handwriting expert and that application was rejected by the order impugned. Being aggrieved, the defendant has filed this application.

3. Upon perusal of the materials placed in support of the application and on hearing the submission of the learned Advocate for the parties, I find that

the learned Trial Judge has adopted himself as an expert. He had compared the signature appearing on the A/D card along with other admitted signatures appearing on the documents such as vakalatnama, written statement, etc. and then he had come to a conclusion that there was no justification to allow the prayer of the defendant and to send the signatures of the defendant for examination by a handwriting expert. This is contrary to the provisions of the Indian Evidence Act. The learned Trial Judge has exceeded his jurisdiction by taking the task of the handwriting expert by making a comparison himself. The order impugned, therefore, cannot be supported. It is set aside. The petition filed by the defendant for appointment of a handwriting expert stands allowed. The learned Trial Judge shall proceed with the suit from that stage of sending the particulars to the handwriting expert for opinion. He shall fix the period within which the handwriting expert shall send his report to the learned Trial Judge. Thereafter, on receipt of the report he shall proceed with the suit in accordance with law. The defendant shall bear the costs of the handwriting expert.

4. This application is allowed in the manner indicated above.
5. Considering the circumstances, there will be no order as to costs.
6. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

