

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1689 of 2013

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.29.10.2012 in I.A.No.789 of 2012 in A.S.No.53 of 2012 of the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District & Sessions Judge at L.B. Nagar, R.R. District.

2. Petitioners herein initially filed suit O.S.No.154 of 2002 before the Principal Junior Civil Judge (West & Sought), R.R. District against the respondents for perpetual injunction restraining them from interfering with their alleged possession and enjoyment of the plaint schedule property. The said suit was transferred to the Court of Additional Junior Civil Judge, Randendra Nagar and was renumbered as O.S.No.70 of 2008. Pending the suit, the 1st petitioner died. After trial, the suit was ultimately dismissed by judgment and decree dt.24.01.2012.

3. Questioning the same, petitioners filed AS.No.53 of 2012 before the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District & Sessions Judge at L.B. Nagar, R.R. District.

4. Pending the said appeal, the 2nd petitioner filed I.A.No.789 of 2012 to direct the 1st respondent to produce her original pass port or its photostat copy for the period 1992 to till date before the Court to know the truth.

5. In the affidavit filed in support of the said application the 2nd

petitioner contended that in the suit, DW1 had given evidence on behalf of the 1st respondent stating that he is her brother and he is looking after the affairs of the 1st respondent since the date of purchase of plot No.1, which is subject matter of the suit; that DW1's father appears to have purchased the property in her name without her knowledge and consent and DW1 was the benamidar for the 1st respondent; that DW1 is prosecuting cases and filing written statements on behalf of 1st respondent; and recently in February, 2012 he even filed caveat petition forging her signature. It was further contended that DW1 had not filed a single piece of paper to show that 1st respondent is her sister and did not even have any authority to depose on her behalf or for other purposes; the signature of 1st respondent was forged by some one or DW1; and they are liable to be prosecuted under I.P.C., since signatures purporting to be the signatures of the 1st respondent on the written statement, caveat petition and vakalat, appear to be different.

6. This application was opposed by the respondents 1, 3, 4 and 5. They denied all the contentions of the 2nd petitioner and pointed out that the scope of the appeal is to decide whether the judgment of the trial Court was correct or not, and whether possession of the suit schedule property as on the date of the suit was with the 2nd petitioner or with the respondents. They contended that it was not open to the 2nd petitioner to cause a roving inquiry to be done in the manner sought and that Order XLI Rule 27 CPC imposes certain restrictions to lead additional evidence in appeals and that the 2nd petitioner did not comply with Order XLI Rule 27 CPC.

7. By order dt.29.10.2012 the Court below dismissed the said application. It held that a roving inquiry on each and every aspect is not necessary and if the signature of the 1st respondent is forged,

she is the proper person to complain and any inquiry in the nature sought by the petitioner would not help in adjudicating the matter in dispute.

8. Challenging the same this Revision is filed.

9. Although, counsel for the petitioners sought to contend that the inquiry of the nature sought by the petitioners by summoning the passport copy of the 1st respondent is necessary for the adjudication of the appeal, I am of the opinion that the said contention is totally misconceived.

10. Having regard to the nature of the suit and the scope of the appeal arising there from, the inquiry of the nature proposed to be initiated by the petitioners, is totally extraneous to the suit. That apart, it would not in any way help in adjudicating the appeal, as the scope in appeal is limited to consider whether the petitioners have *prima facie* title, balance of convenience and whether irreparable injury would be caused to them, if relief of injunction is not granted. Also the question whether they are in physical possession of the property, which is subject matter of the suit as on the date of filing of the suit will be gone into in the appeal.

11. I therefore, do not find any merit in this Civil Revision Petition and it is accordingly dismissed. There shall be no order as to costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

08th September, 2015

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