

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

C.R.P.No.6354 of 2012

ORDER:

Heard Sri K.S.Murthy, learned counsel for the petitioner and Sri N.Pramod, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.06-11-2012 in I.A.No.217 of 2012 in O.S.No.148 of 2012 of the VI Additional Junior Civil Judge, Vijayawada.

3. Petitioner herein is the plaintiff in the suit. She filed the suit for declaration of her title and perpetual injunction restraining the respondent from interfering with her alleged peaceful possession and enjoyment of the suit schedule property. In the suit, she relied upon a Will dt.30-03-1996 allegedly executed in her favour by her mother-in-law by name Annapurna who is said to have died on 16-05-1996. According to the petitioner, both the attestors to the said Will had died, and in order to prove the signature of one of the attestors by name Bala Gopala Rao, who died in January 2009, his son by name R.Sundara Vadana, who was employed in the Indian Forest Service is to be examined on commission.

4. She therefore filed I.A.No.217 of 2012 under Order 26 Rule 1 CPC to appoint advocate Commissioner

to record the evidence of the said Sundara Vadana as P.W.2.

5. This application was opposed by the respondent contending that the very Will set up by the petitioner is a forged document and there is no necessity to examine the said person as witness on commission. It was pointed out that the said person is hale and healthy and he need not be examined on commission.

6. By order dt.06-11-2012, the Court below dismissed the said application observing that proper reasons were not given by the petitioner to get the said person examined through an Advocate Commissioner without bringing him before the Court.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the witness is not a resident within the local limits of the jurisdiction of the VI Additional Junior Civil Judge, Vijayawada and under Order 26 Rule 4 CPC, the commission can be issued to examine him as a witness and ignoring this provision of law, the impugned order has been passed.

9. Learned counsel for the respondent however did not dispute this contention but pointed out that although at the time when the application was filed,

R.Sundara Vadana was in Government service, at the moment he had retired from service and nothing prevents him from coming to the Court to give evidence. He also contended that the said person is a close relative of the petitioner and so the petitioner should have taken steps to examine him as her witness by producing him before the Court.

10. There is no dispute that the person R.Sundara Vadana, who the petitioner seeks to examine on commission, is not resident within the local limits of jurisdiction of the Court below. Under Order 26 Rule 4 (1) (a) CPC, the Court can issue a commission for examination of a witness who is resident beyond the local limits of its jurisdiction.

11. In my considered opinion, the request of the petitioner to examine the person R.Sundara Vadana as a witness cannot be rejected since the petitioner had furnished adequate reasons why he is required to be examined on commission.

12. In this view of the matter, the impugned order cannot be sustained and it is accordingly set aside.

13. The Civil Revision Petition is allowed. I.A.No.217 of 2012 in O.S.No.148 of 2012 of the VI Additional Junior Civil Judge, Vijayawada is allowed.

14. Since the suit is of the year 2012, the Court

below shall expeditiously dispose of the suit preferably within a period of six months from the date of receipt of a copy of this order. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-09-2015

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