

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4816 of 2015

ORDER :

The plaintiff is the petitioner in the present revision. The respondents 1 and 2 herein filed a petition I.A. No.391 of 2015 in O.S. No.306 of 2012 on the file of III Additional Junior Civil Judge, Kadapa under Order XXVI Rule 4 C.P.C before the trial Court seeking to appoint an Advocate Commissioner to record the evidence of Smt.Bellam Devaki Devi as D.W-3 on behalf of the defendants 1 and 2 and to file report. The trial Court allowed the same and aggrieved by said order dated 10.08.2015 the petitioner filed the present revision under Article 227 of the Constitution of India.

2) In the application before the trial Court for examination of said Devaki Devi, it is contest of the 1st respondent, who is petitioner herein that one Bellam Sudhakar Reddy is not the successor of said Devaki Devi in claiming as grand son of her for the plaintiff to claim as purchaser from said Sudhakar Reddy. In the petition, it is further averred that recently on their enquiry they came to know a shocking news that said Devaki Devi is alive and presently she is residing at Hyderabad with her husband Venkata Subba Reddy and her two sons and to prove the same examination of said Devaki Devi on commission is a need saying she is suffering from ill-health and cannot come over to Kadapa. Impugning the said petition averments, the plaintiff as sole respondent to the petition filed counter stating that said Devaki Devi died on 10.06.1976 itself and Sudhakar Reddy is her grand son and the plaintiff is purchaser from said Sudhakar Reddy under the registered sale deed dated 13.03.1979 itself and basing on that sale deed, the plaintiff got title and thereby there is no need to examine a dead person on commission.

3) The learned Junior Civil Judge, after hearing both sides and on perusal of the death certificate of said Devaki Devi issued by Gram Panchayat on behalf of Health, Medical & Family Welfare Department

that was recorded on 18.06.2015 about the said death of Devaki Devi on 10.06.1976 and what the learned Junior Civil Judge having reproduced the above pleadings in answering the point formulated stated is, for the examination of said Devaki Devi sought by the defendants as petitioners, plaintiff as respondent claiming by filing death certificate also of Devaki Devi died on 10.06.1976 and also filed photographs in support of the factum. However strangely without advertng to the crux as to Devaki Devi is proved alive to issue any commission for her examination and even without observation to ignore the photos or the death certificate and even without any rejoinder to the counter by the petitioners if at all the death certificate and their counter assertion in support of it not true, observed that “after hearing the arguments on both sides, this Court is of the opinion that to appoint an Advocate Commissioner to record the evidence of Bellam Devaki Devi as D.W-3 is reasonable and acceptable and that no prejudice would be caused to the respondent No.1/plaintiff” and appointed one G.Trivikram Singh, Advocate as commissioner to record the evidence.

4) Strangely the learned Magistrate without applying the judicial mind, even respondents’ counter proves said Devaki Devi died and death certificate substantiating it filed, even it is a public document issued in compliance Section 74 and 77 of Indian Evidence Act admissible on its production and on presumption under Section 114 of the Indian Evidence Act also on its genuineness for the defendants/petitioners to the commission appointment not rebutted the same muchless showing so called recording of death is a false or it is a forged document or fabricated one though she is alive as if showing died, the appointment of a commissioner to examine a dead person is unsustainable under law. In the absence of finding that she is alive, the order is perse when unsustainable it is liable to be set aside.

5) It is left open to the defendants to prove before the trial Court in support of their contention of said Devaki Devi is alive, if she is able to come to Court or atleast by preliminary by examination of her husband or sons about she is alive and then if necessary and even

proved as required by law and unable to come to Court to give evidence to consider for examination of her on commission as laid down in ***Sajana Granites V. Manduva Srinivasa Rao*** as a mere assertion of a witness not doing well is not a ground to appoint a Commissioner for examination without proof by medical certificate.

6) In the result, the revision is allowed by setting aside the order dated 10.08.2015 in I.A. No.391 of 2015 in O.S. No.306 of 2012 on the file of III Additional Junior Civil Judge, Kadapa and consequently the recording of evidence also. There shall be no order as to costs. The pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19th November, 2015

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