

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.2254 of 2015

ORDER:

In this revision petition filed under Article 227 of the Constitution of India, the petitioners/defendants seek to set aside the order dt:17.04.2015 in I.A.No.84 of 2013 in O.S.No.24 of 2007 passed by the learned I Additional District Judge, Srikakulam, whereby and whereunder the learned Judge has allowed the petition filed by the respondents/plaintiffs under Section 45 of the Indian Evidence Act to send Ex.X1 and original registered sale deed dt:19.01.1995 executed by Ponnada Ammayamma and her children and others in favour of Mirthipati Narayanamma containing the LTMs of Ponnada Ammayamma to the Handwriting Expert and Fingerprint Examination for comparison of their left thumb impressions of Ponnada Ammayamma and her children Sankara Rao, Satyanarayana and Venkata Ramana, find place in the above said two documents with one another.

2) Notice in the above revision was directed against respondents/ plaintiffs. Though notice was served but there is no representation on their behalf, hence heard learned counsel for revision petitioners. His submission is that when I.A.No.84 of 2013 and other related I.As were coming up for hearing, the petitioners/defendants filed a memo expressing their no objection for disposal of all the connected I.As

though CMA No.958 of 2009 filed by them is pending before Hon'ble High Court. Learned counsel further submitted that unfortunately the trial Court mistook the memo as if the petitioners had no objection for allowing the petitions and allowed I.A.No.84 of 2013 and other I.As. Learned counsel submitted that what all the petitioners/defendants submitted in the memo was that inspite of pendency of CMA No.958 of 2009 before Hon'ble High Court, the petitioners/defendants have no objection for disposal of the batch of the I.As filed by the respondents/plaintiffs on merits. In view of the impugned order under revision and also other connected orders against which separate revisions are filed, the petitioners/defendants suffer any amount of prejudice unless an opportunity is given to them to file their counters and contest the I.As. He submitted that the petitioners/defendants have no objection if all the I.As are disposed of on merits.

3) Perused the copy of the memo filed by the defendants before the lower court, which reads that defendants expressed that they have no objection for disposal of I.A.No.72/2013, I.A.No.73/2013, I.A.No.74/2013, I.A.No.82/2013, I.A.No.83/2013, I.A.No.84/2013 even though CMA No.958/2009 (said to be filed by the defendants) is pending before the High Court, as the relief claimed in the aforesaid I.As and CMA No.958/2009 are different. In view of the said memo, I find force in the

submission of learned counsel for petitioners/defendants that what all they agreed through the memo, was for disposal of the I.As pending before the trial Court on merits but they did not consent for allowing the petitions without contest.

4) In the result, this Civil Revision Petition is allowed and the impugned order in I.A.No.84 of 2013 in O.S.No.24 of 2007 passed by the learned I Additional District Judge, Srikakulam is set aside and the trial Court is directed to give an opportunity to petitioners/defendants to file their counter in I.A.No.84 of 2013 and dispose of the same on merits according to law expeditiously.

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

U. DURGA PRASAD RAO, J

Date: 26.08.2015
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