

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.1487 of 2015

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ORDER:

This revision is preferred against the order dated 13.02.2015 in I.A.No.35 of 2015 in O.S.No.48 of 2010 on the file of Senior Civil Judge, Siddipet.

2. Revision petitioner herein is plaintiff who filed the above referred suit O.S.No.48 of 2010 for partition of plaint schedule property and allot ½ share to plaintiff and the remaining ½ share to defendants No.1 and 2. Defendants filed written statement disputing the claim of plaintiff contending that properties were already partitioned and plaintiff executed a sale deed in the year 1991 in favour of second defendant and that the property is not available for partition. Plaintiff herein filed above referred I.A.No.35 of 2015 under Section 45 of the Indian Evidence Act requesting the Court to send the sale deed dated 03.10.1991 which is marked as Ex.B1 to an expert to examine the genuineness of the thumb impression containing on Ex.B1 sale deed. Defendants opposed the said application and the trial Court on a consideration of affidavit averments, counter averments and other material, dismissed the application. Aggrieved by which, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that the plaintiff never executed sale deed dated 03.10.1991 marked as Ex.B1 and to prove that the said document do not bear the thumb

impression of plaintiff, it is necessary to send the document to an expert. He submitted that Court below on erroneous understanding of the issue involved, dismissed the application without giving opportunity to revision petitioner. He submitted that valuable rights of the petitioner will be effected, if opportunity is not given to petitioner to prove that Ex.B1 does not bear his thumb impression.

5. On the other hand, advocate for respondent submitted that trial Court rightly dismissed the application by taking the conduct of plaintiff into consideration. He submitted that sale deed is of the year 1991, which is a registered sale deed and the suit is filed in the year 2010 for partition, though defendants specifically took a plea in the written statement about this document no rejoinder is filed and no steps are taken and the present petition is filed at the fag end of the case when the matter is posted for arguments. He further submitted that trial Court has rightly dismissed the application and that there are no grounds to interfere with the orders of trial Court.

6. Now the point that would arise for my consideration is :

“Whether the order of trial Court is legal, correct and proper?”

POINT:

7. I have perused the material papers including impugned order dated 13.02.2015. The plaintiff filed suit for partition and separate possession. Plaintiff is brother of first defendant and the second defendant is son of first defendant and there is no dispute with regard to relationship between the parties. According to plaintiff, suit schedule property is ancestral and joint family properties. The suit is filed on 22.06.2010 and the written

statement is filed on 07.09.2010. It is specifically pleaded in the written statement that the suit schedule properties were partitioned between plaintiff and first defendant and after that plaintiff sold away his entire share to the second defendant through a registered sale deed dated 03.10.1991 that is disputed document.

8. Admittedly, trial was commenced and both sides evidence is concluded and the suit is at the stage of arguments. As seen from the impugned order, plaintiff appears to have filed petition under Order VIII Rule 9 of CPC seeking permission to file rejoinder. After completion of plaintiff's evidence and that petition was dismissed by the trial Court on merits. It appears plaintiff also filed an application under Order 1 Rule 10 of CPC to implead a third party as third defendant and that application was also dismissed. It appears plaintiff has not cross-examined DW1 when his chief affidavit was filed on 21.08.2013, and the Court recorded his cross-examination as 'Nil'. Plaintiff filed a petition to recall DW1 for cross-examination and that petition was allowed and plaintiff was permitted to cross-examine DW1 and accordingly cross-examined DW1 on 25.11.2014. DWs.2 and 3 were cross-examined on 19.12.2014 and on that day this petition is filed. Considering all these aspects, trial Court dismissed the application holding that plaintiff remained silent for nearly 5 years, and only at the fag end of the trial, he came forward to this application only to drag the proceedings and held that there are no merits in the application.

9. On a scrutiny of the material, I do not find any illegality or jurisdictional error in the order of trial Court on the other hand it rightly dismissed the application taking the facts of the case and nature of the suit into consideration.

10. For these reasons, I am of the view that there are

absolutely no grounds to interfere with the findings of the trial Court for disallowing the request of plaintiff.

11. Accordingly, this Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions, if any pending, in this petition, shall stand closed.

S. RAVI KUMAR, J

Date: 19-06-2015.

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