

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

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CIVIL REVISION PETITION No.3842 of 2013

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ORDER:

A suit for partition filed by the respondents ended in a preliminary decree, which was confirmed up to the Supreme Court.

During the course of proceedings in the suit, the respondents/plaintiffs themselves relied on a document purporting to be a Will dated 02-01-1956 allegedly executed by one N.Saya Goud in favour of his wife Chandramma and Nemuri Pentamma, the deserted wife of his son Balaraj Goud in respect of land measuring Ac.19-15 guntas in Sy.Nos 284, 288, 290, 292 and 293 situated in Lothukunta Village of Alwal Mandal, Ranga Reddy District. But the original will was not filed in the suit.

Suit was ultimately decreed on 08-09-1993 by the District Judge at Ranga Reddy at Saroornagar, Hyderabad in favour of the respondents.

A.S.No.78 of 1994 filed against said decree and judgment, was dismissed by High Court of Andhra Pradesh at Hyderabad. But even in the said proceedings, the will dated 02-01-1956 was not filed and the Appeal was dismissed on 13-01-2009.

Thereafter, the SLPs preferred to the Supreme Court which were later numbered as C.A.Nos.1420-21 of 2008 and by judgment dated 19-02-2008, the Supreme Court remanded the matter to High Court to decide afresh after considering the will dated 02-01-1956 executed by N.Saya Goud. The parties were permitted to place original will dated 02-01-1956 for consideration of the High Court. In case, said document was not available in original, they were also entitled to place certified copy of the same.

The High Court rendered a fresh judgment on 30-01-2009 after remand. During proceedings in the High Court, after remand also, neither original will nor certified copy were placed before the High Court. The High Court held that photocopy of the will dated 02-01-1956 could not be taken on record and rejected the said application.

This was questioned in SLP (Civil) No.11716 of 2009. The main judgment of the High Court was also questioned before the Supreme Court. The Supreme Court held that will dated 02-01-1956 had never been admitted as required under the law and therefore, High Court judgment is right and such document cannot be taken on record. But, it however examined a copy of the photo copy of the will dated 02-01-1956 and made certain observations in regard thereto in its judgment, which is

reported in **N.Srihari v. N.Prakash**^[1]. It confirmed the judgment of the High Court in the Appeal, which had been pronounced after remand.

Thereafter, the petitioners, who were the defendants 5 and 6 in the suit, filed I.A.No.2599 of 2012 to set aside the preliminary decree dt.08-09-1993 in O.S.No.9 of 1993 as null and void, alleging that the respondents had obtained the said decree by playing fraud and mis-representation on N.Chandramma, the Court as well as the petitioners and the defendants in the suit by illegally and fraudulently obtaining Ex.A.1 will, which is the basis of said preliminary decree.

In that application, they filed I.A.No.1288 of 2013 to mark the copy of the will dt.02-01-1956 executed by Saya Goud and which according to them had been filed along with plaint by the respondents, as secondary evidence. In the affidavit filed in support of the said application, they contended that in the judgment rendered on 29-10-2010 by the Supreme Court which is reported in **N.Srihari** (supra) the recitals in the said will had been considered and so it became part and parcel of suit record, and to establish the fraud and misrepresentation of the respondents, copy of the same is necessary to be looked into.

This application was opposed by the respondents

who contended that the Supreme Court had upheld the decision of the High Court and had also observed that it cannot be taken on record; and when such a finding is given, the plea of the petitioners that it had become part and parcel of the said record, cannot be accepted. The allegations of fraud and misrepresentation levelled by the petitioners were also denied.

By an order dated 12-07-2013 the Court below dismissed I.A.No.1288 of 2013 holding that the Supreme Court itself had observed that said will cannot be taken on record in its judgment dated 29-10-2010; in view of that finding, the Court below cannot go into the said question again; and there is no question of marking it as secondary evidence invoking Section 63(2) of Evidence Act, 1872.

Learned counsel for the petitioners sought to contend that the Supreme Court in its order had referred to certain contents of the will and given certain findings thereon which are now being violated by the Court below.

I am of the opinion that there is no such order passed by the Court below neglecting the observations, if any, of the Supreme Court. Once the Supreme Court held that the will dated 02-01-1956 cannot be brought on record, no exception can be taken to the order passed by the Court below. The finding of the Supreme Court in that regard is binding on the Court below and also this Court.

Therefore, the Civil Revision Petition is dismissed.
Miscellaneous Petitions, if any, pending in this Revision
shall stand closed.

M.S. RAMACHANDRA RAO, J

17-08-2015,
nvl

[\[1\]](#) (2010) 14 SCC 460