

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION Nos.3875 & 3882 of 2015

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COMMON ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondents. In view of the nature of relief sought in both the Civil Revision Petitions, they are being disposed of by this common order.

2. The petitioners in both the Civil Revision Petitions are defendant Nos.1 to 3 in O.S.No.21 of 2004 on the file of the Court of X Additional District & Sessions Judge, Visakhapatnam at Anakapalle (for short, trial Court). The respondents herein filed the said suit seeking partition of the suit schedule property. In the said suit, the evidence of the plaintiffs' side was closed. At the stage of leading evidence on behalf of the defendants, they filed I.A.No.1057 of 2015 for summoning four documents from the Sub-Registrar's Office, Anakapalle to use those documents for sending them along with the disputed documents Ex.X.1 and X.2 to the expert for comparison and I.A.No.1058 of 2015 for sending the signatures and thumb impressions of the executant on Exs.X.1 and X.2, Nadipalli Satyanandam, for comparison with that of his admitted signatures and thumb impressions on originals of Exs.A.1, A.2, A.7 and A.19. The trial Court, by its separate orders dated 23.07.2015, dismissed the said applications. Challenging the same, the present Civil Revision Petitions are filed.

3. The case of the petitioners is that their father, Nadipalli Satyanandam, executed Ex.X.1 Will Deed and the plaintiffs suggested to D.W.4, the attester of Ex.X.1, that the signatures and thumb impressions bearing on Ex.X.1 and its connected records are not that of the deceased Nadipalli Satyanandam. The plaintiffs already marked Exs.A.1, A.2, A.7 and A.19, registration extracts of documents registered in the Sub-Registrar's Office, Anakapalli through P.W.2 and the originals of the said documents contained the admitted signatures and

thumb impressions of the said Nadipalli Satyanandam.

4. The trial Court dismissed I.A.No.1057 of 2015 with the following observations:

“3. Simply because respondents/plaintiffs obtained registration extracts of Will, cancellation deed, lease agreement and rectification deed and get it marked as Exs.A.1, A.2, A.7 and A.19 in the suit from Sub-Registrar's Office, Anakapalle and got it marked the Registration Extracts of the documents Exs.A.1, A.2, A.7 and A.19, it does not mean that original Will, cancellation deed, lease agreement and rectification deed are available with Sub-Registrar, Anakapalle. In general, Sub-Registrars used to return the original documents to the concerned parties soon after registration of the documents and only retain the details of contents of the documents, names of executants, attestors and scribe and detail of registration of the documents in their records and they used to give registration extracts of those documents to the parties concerned whenever the parties concerned filed copy application. Therefore, the originals of registered documents as sought for in the petition could not available with Sub-Registrar/s Office, Anankapalle. Therefore, no useful purpose will be served by consider this petition. Hence petition is devoid of merits and liable to be dismissed.”

5. The trial Court dismissed I.A.No.1058 of 2015 with the following observations:

“8. It is not out of place to mention that petitioners herein also filed I.A.1057/15 u/Or.16, R.6 CPC praying the Court to summon the documents such as, original registered will dt.19-6-1990, original registered cancellation deed dt.1-2-1991, original lease agreement dt.30-3-2002 and original rectification deed dt.11-9-2002 from Sub-Registrar's Office, Anakapalle to use those documents as admitted signatures and thumb impressions of Satyanandam for comparison with disputed signatures and thumb impressions of Satyanandam on Exs.X.1 & X.2 by expert. This Court does not understand how the original Regd. Will, Original Regd. Cancellation Deed, original Sale Agreement and original Regd. Rectification Deed are available with Sub-Registrar's Office, Anakapalle. The original registered documents will be returned to concerned parties some time after registration by the concerned Sub-Registrars. Sub-Registrars used to maintain only details of the documents and names of executants, attestor and scribe and details of registration of the documents. Basing on those details, they used to issue registration extracts of those documents to the party concerned by receive required fee. It does not mean that Sub-Registrars used to retain the original registered documents such as Will, lease deed, cancellation deed and rectification deed etc., in the office. Therefore, no useful purpose will be served by allow the petition

IA.1057/15. In the absence of admitted signatures and thumb impressions of late Nadipalli Satyanandam of contemporaneous period with that of disputed documents Exs.X.1 & X.2, no purpose will be served by consider this petition as Expert could not able to compare and to give opinion/report. On this ground alone, the petition is liable to be disallowed.

9. In fact, the suit is of the year 2004 and after filing written statement, issues are settled and trial is taken up long long back. Plaintiff's side evidence is closed. Defendant's side evidence is part heard. Now we are in the year 2015. Defendants 1 to 3 could have filed this petition at the earliest point of time. There are absolutely no reasons to entertain this petition at this stage of the suit. **(P.Damodar Vs A.Sankara Rao 2005 (2) AP.L.J, 77 (SN))**

10. Even if this petition is not considered, no prejudice would be caused to petitioners/defendants 1 to 3 as they already examined one of the attestors of Ex.X.1 Will as DW.4 and discharged burden of proof. In fact other side i.e., plaintiffs have to take steps to send the disputed documents to the Expert for comparison and opinion to disprove the case of defendants 1 to 3 in case the Will is not true as a token of discharge of onus of proof lies on them.

11. On any one of the grounds mentioned supra, this petition is devoid of merits and liable to be disallowed.

12. In the result, petition is dismissed. No costs."

6. It is to be seen that Exs.A.1, A.2, A.7 and A.19 are filed by the plaintiffs. The present applications are filed only on the basis of a suggestion given to D.W.4 with regard to the signatures of Nadipalli Satyanandam on Ex.X.1. The case of the defendants is that the originals of Exs.A.1, A.2, A.7 and A.19 contain the signatures of Nadipalli Satyanandam, and if those documents are called and sent along with Ex.X.1 to the expert, the doubt created on Ex.X.1 would be cleared. It is not known from the record who is in possession of the originals of Exs.A.1, A.2, A.7 and A.19. Even otherwise also, Ex.X.1 was filed in original. The attesor of Ex.X.1 was examined as D.W.4. The trial Court rightly observed that the plaintiffs did not take any steps to send the disputed document to expert for comparison. The defendants have already taken steps for proving the

Will as per law and even otherwise also, without calling for the said documents, they can prove the execution of the Will as contemplated under the provisions of the Indian Evidence Act and the Indian Succession Act.

7. In the circumstances, the orders passed by the trial Court in I.A.Nos.1057 and 1058 of 2015 are upheld and the Civil Revision Petitions are accordingly dismissed. However, the trial Court is directed to take into consideration the observations made in para 10 of the order in I.A.No.1058 of 2015 while disposing the suit. No order as to costs. Miscellaneous Petitions, if any pending in both the Civil Revision Petitions, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 25.11.2015

TJMR