

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
FRIDAY, THE SEVENTEENTH DAY OF JULY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.1290 of 2015

BETWEEN

Namala Munikrishnaiah and another.

... PETITIONERS

AND

V. Vaimala and others.

...RESPONDENTS

Counsel for the Petitioners: MR. V.JAGAPATHI

Counsel for the Respondent: MR. AKKAM ESHWAR – R1

The Court made the following:

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ORDER:

Defendant Nos.5 and 6 in O.S.No.104 of 2011 on the file of the Senior Civil Judge, Puttur, are the petitioners herein. The grievance of the petitioners is that their application to recall P.W.1 for further cross examination was dismissed by the trial Court under the impugned order dated 09.03.2015.

2. The facts of the case show that in the aforesaid suit for partition the plaintiff examined her witnesses and the evidence of the defendants already commenced by recording D.W.1's evidence.

During the evidence of D.W.1, a document, Ex.B11 was marked, which is stated to be an agreement of sale dated 05.06.1993.

While P.W.1 was in the box, the said document was not available and as such, the petitioners sought to recall P.W.1 as she was not confronted with the said document vide I.A.No.1278 of 2014.

That application was rejected by the Court below on the ground that there is no signature of P.W.1 on the document and as such, there is no purpose in confronting the said document to P.W.1, as she was not a party to the said document.

3. Learned counsel for the petitioners has filed a copy of the said document, Ex.B11, to substantiate the factual error committed by the Court below in not noticing that the second signature on the document is that of P.W.1. Learned counsel states that the said document was signed by P.W.1 prior to her marriage, hence, the previous name appears.

4. I have heard the learned counsel for the first respondent.

5. I find that there is no controversy between the parties that Ex.B11 was marked through D.W.1 and as such, there was no occasion for the petitioners to confront the said document to P.W.1.

Further, *prima facie*, P.W.1 appears to be a party to the document as her signature is shown as second signature. Whether the said signature is that of P.W.1 or not is a matter, which can be ascertained only by permitting P.W.1 to be recalled and giving an opportunity to the petitioners to cross-examine her. In that view of the matter,

I find that the factual error committed by the Court below, rejecting the application of the petitioners, is required to be corrected. Accordingly, the impugned order is set aside and I.A.No.1278 of 2014, filed by the petitioners, shall stand allowed. The trial Court shall permit recalling of P.W.1 and cross-

examination to be conducted on a date fixed by the Court below after giving notice to both parties and thereafter, proceed further in the trial of the suit.

The civil revision petition is allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 17, 2015
DSK