

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.Nos.2084, 2086 & 2101 of 2014

Between:

Singamaneni Sreedevi

Petitioner

and

Singamaneni Venkateswarlu and others.

.....Respondent

Date of Judgment pronounced : 04-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.Nos.2084, 2086 & 2101 of 2014

COMMON ORDER:

Heard Sri N.Subba Rao, learned counsel for the

petitioner and Sri M.R.S.Srinivas, learned counsel for the respondents.

2. As these Civil Revision Petitions arise between the same parties and out of the same suit and so they are being disposed of by this common order.

3. The petitioner herein in 1991 filed the above suit, *in forma pauperis* through her mother, for partition of the plaint A schedule properties into eight equal shares and for recovery of possession of three such shares, for past profits and future profits and for costs.

4. She arrayed her paternal grand father as 1st defendant in the suit. The mother of the petitioner and the father of the petitioner are divorced according to the plaint averments. The said suit was numbered as O.S.No.2 of 1995 in the Court of the Senior Civil Judge, Addanki.

5. Pending suit, 1st defendant died. The 1st respondent herein was then impleaded as 9th defendant in the suit. He filed a Written Statement in the suit alleging that the deceased-1st defendant had executed a registered Will dt.28-11-1994 bequeathing the plaint schedule properties to him.

6. Issues were framed. Trial commenced. Evidence on the side of the plaintiff was closed and 9th defendant examined himself as D.W.1 and also examined

D.Ws.2 to 5.

7. The petitioner however contended that the said Will dt.28-11-1994 set up by 1st respondent/9th defendant is a forged one.

8. In view of the said plea taken by the petitioner, 1st respondent filed I.A.No.813 of 2012 contending that the scribe and attesters of the said Will are not alive and since a plea of forgery of the said Will was taken by the petitioner, it is necessary to cause production of the TA Register containing the signatures & thumb impressions of the executant, scribe and attesters of the Will dt.28-11-1994 executed by 1st defendant from the Sub Registrar's office, Addanki.

9. He also filed I.A.No.814 of 2012 under Section 45 of the Evidence Act, 1872 to send the Will Ex.B-2 to a Government Thumb Impression Expert for comparing thumb impression thereon with the thumb impression on the Will and give opinion.

10. Apart from this, he also filed I.A.No.205 of 2012 under Order 18 Rule 17 CPC praying to recall D.W.3 for giving further evidence on his behalf. In this application, he contended that D.W.3, while giving evidence, has deposed that he can identify his father's signature and it was also elicited in his cross examination that he would bring receipts containing signatures of his

father and registered documents; that the petitioner could not place the said documents on the date when D.W.3 was examined; that the witness D.W.3 himself brought a registered sale deed dt.18-01-1992 containing the signatures of father of D.W.3; and therefore, it is necessary to recall D.W.3 with regard to identification of the signatures of his father and also with regard to the document dt.18-01-1992.

11. Counter affidavits were filed to these applications by the petitioner opposing them. In I.A.No.813 of 2012, the petitioner contended that the filing of these applications is an abuse of process of Court and the T.A. Register is not a relevant document since the thumb impressions in the said register are not admitted thumb impressions. She contended that there is no necessity to send the Will to an expert and no purpose would be served. She contended that the applications are filed at a highly belated stage and cannot be entertained. She further contended that there is no need to recall D.W.3 and if he is recalled, it would amount to permitting 1st respondent to fill up gaps in the evidence of D.W.3.

12. By separate orders dt.12-06-2014, the Court below allowed all the three applications. It held that the Will dt.28-11-1994 has already been marked as Ex.B-2 and since the scribe and attestors of the Will are no more, the son of the scribe of the Will was examined as D.W.3

for identification of the signatures of his father. It held that he was ordered to be recalled as per orders in I.A.No.205 of 2012 and issuance of the summons to the Sub Registrar directing him to produce T.A. Register containing the signatures and thumb impressions of the scribe, attesters and executant of the Will is necessary since the entire case depends upon the said Will. It held that summoning of T.A. Register from the office of the Sub Registrar, Addanki, could help in the adjudication of the suit.

13. Coming to I.A.No.814 of 2012, it held that since the petitioner is disputing Ex.B-2 Will dt.28-11-1994 set up by 1st respondent, the thumb impression and hand writing thereon need to be compared with those on the T.A. Register (which contains the signatures and thumb impressions of the executants, scribe and attesters) to find out whether there is any forgery or not. It held that even though the experts view is not conclusive, it is a corroborative piece of evidence and would assist the Court. It further held that no prejudice would be caused to the petitioner, if the Will Ex.B-2 is sent to an expert.

14. It also held that 1st respondent in I.A.No.205 of 2012 was seeking to recall D.W.3 for the purpose of identification of signatures of his father in the sale deed dt.18-01-1992 and even if this petition is allowed, no prejudice would be caused to the other side.

15. Challenging these orders, these Revision Petitions are filed.

16. Learned counsel for the petitioner contended that after the evidence on the side of the defendants is closed and the matter was posted for arguments, these applications have been filed by 1st respondent/D-9; the Court below ought not to have entertained and allowed these applications particularly when the suit is of the year 1991; the intention of 1st respondent appears to be to drag on the suit indefinitely and he cannot be allowed to succeed by filing interlocutory applications of this nature. He further contended that production of the T.A. Register is unnecessary, that there is no need to send Ex.B-2 Will to an expert to compare with the thumb impressions and signatures on Ex.B-2, and that there is no necessity to recall D.W.3 on the grounds raised by 1st respondent.

17. Learned counsel for 1st respondent on the other hand refuted the above contentions and pointed out that in order to assist the Court in the adjudication of the matter, the Court below felt it necessary to summon the T.A. Register containing the signatures and thumb impressions of the scribe and attestors of the Will which is registered; it had decided also to send Will to an expert to compare the signatures and thumb impressions thereon

with those in the T.A. Register; and on the mere ground that the suit is an old suit, opportunity to 1st respondent to establish his defence to the suit cannot be denied. He further contended that D.W.3, having stated in his evidence that he can identify signatures of his father, who is said to be attester to Ex.B-2 Will, ought to be recalled to give further evidence regarding the document dt.18-01-1992 which is said to contain the signatures of his father and this will also not cause any prejudice to the other side.

18. I have noted the submissions of both sides.

19. No doubt, the suit is an old suit of the year 1991 and it is unfortunate that it is pending, even though 24 years have elapsed since its presentation. But the said fact alone cannot be a ground to deprive 1st respondent of an opportunity to prove his case. As a defence to the claim of the petitioner for partition, 1st respondent had set up a registered Will dt.28-11-1994 (Ex.B-2) allegedly executed by 1st defendant in the suit in his favour.

20. According to 1st respondent, the scribe and attestors of the Will are no more. He has no doubt examined the son of one attestors as D.W.3 but in order to further prove his case, he wanted the T.A. Register in the office of the Sub Registrar, Addanki (which would contain the signatures and thumb impressions of the executants

and attesters of the Will) to be produced and also to give evidence by invoking Order 16 Rules 1 and 2 CPC in this regard.

21. Order 16 Rule 6 CPC empowers the Court to summon any person to produce a document without being summoned to give evidence and Order 16 Rule 1 (2) CPC entitles a party to obtain summons for attendance of any person.

22. In my considered opinion, the production of the T.A. Register from the office of the Sub Registrar, Addanki, which would contain the thumb impressions of attesters and the executants, would assist the Court in determining the genuineness of the Will set up by 1st respondent, since the petitioner is taken a plea that the Will is forged. Also if Ex.B-2 Will is sent to an expert for comparison of the thumb impressions thereon with those contained in T.A. Register, it would assist the Court in coming to conclusion as to whether the thumb impression on it is the thumb impression of the executant of the Will. Therefore, no exception can be taken to the order passed by the Court below in this regard.

23. Coming to the request of 1st respondent to recall D.W.3, it is not disputed that D.W.3 has stated in his evidence that he can identify the signatures of his father who had attested Ex.B-2 Will and according to 1st

respondent, D.W.3 has produced the sale deed 18-01-1992 containing the signatures of his father Mamidi Aadishesu. Therefore, the Court below is right in allowing I.A.No.205 of 2012 and recalling D.W.3 for the purpose of identification of signatures of his father in the said sale deed dt.18-01-1992 and this also does not cause any prejudice to the petitioner.

24. In this view of the matter, I do not find any merit in the Revision Petitions. Therefore, all the three Civil Revision Petitions are dismissed. It is however made clear that since it is an old suit filed in the year 1991, the Court below shall dispose of the suit expeditiously within a period of three months from the date of receipt of a copy of this order without unnecessarily granting adjournments to either party. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-08-2015

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