

HONOURABLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION Nos.4966 & 4967 OF 2015

DATED 1ST December, 2015

BETWEEN

R.Jayakumar

...Petitioner in both CRPs

And

BHC Agro India Pvt Limited,

Rep. by its Director and ors

...Respondents in both CRPs

HONOURABLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION Nos. 4966 & 4967 OF 2015

COMMON ORDER:

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The petitioner herein is the plaintiff in OS.No.4 of 2004 on the file of the learned I Additional District Judge, Chittoor. He questioned the order passed by the said Court dated 7.10.2015 whereby I.A.Nos.239 and 238 of 2015 filed by respondents 2 to 5 herein/Defendants 2 to 5 seeking to reopen the suit and receive the original gift deed dated 24.12.1981 respectively were allowed.

Both sides have led their evidence and finally argued the matter. However, due to change of the Presiding Officer, the suit could not be disposed of and the matter is coming up for arguments again. At that stage, respondents 2 to 5 herein/Defendants 2 to 5 filed the present applications alleging that certified copy of the original gift deed was already filed in their favour and the same was marked in the suit; however, original gift deed together with plan is traced out recently and as such, the same should be received now in evidence.

The petitioner/plaintiff contested the said applications while contending that certified copy of the gift deed is already marked and therefore there is no need to receive the original gift deed. In any case, the plan appended to the original gift deed is seriously disputed by the petitioner by contending that the plan/sketch attached to the gift deed was not part of the document and it was subsequently prepared.

Having regard to the respective submissions of either side, the Court below allowed I.A.Nos.238 and 239 of 2015 by taking in evidence the original gift deed which was misplaced and recently traced out and certified copy which was already marked in evidence. To the extent of genuineness of the sketch/plan appended to the original gift deed, it was observed that the same can be marked separately and subject to the respondents/Defendants 2 to 5 proving the genuineness of the same and the petitioner/plaintiff has an opportunity to cross examine the witness.

The said order is questioned in the present Civil Revision Petition.

I have heard the learned Counsel for the petitioner.

No doubt the primary evidence of gift deed is now sought to be brought on record by filing original gift deed. Merely because certified copy of the gift deed is already marked is no ground to reject the primary evidence. Hence, the direction of the Court below to the extent of directing to reopen the suit and

receive the original gift deed is sustainable. To the extent of plan/sketch filed along with the original gift deed is seriously disputed by the petitioner/plaintiff. Though the petitioner/plaintiff doubted its genuineness or authenticity, even otherwise in the opinion of the Court below, it is for respondents 2 to 5/Defendants 2 to 5 to prove the genuineness of the plan/sketch appended to the original gift deed. Assuming that the respondents 2 to 5/Defendants 2 to 5 discharged their duty in proving the genuineness of the sketch, the petitioner/plaintiff has opportunity to cross-examine them. The petitioner/plaintiff therefore has an opportunity to show that the sketch appended to the original gift deed is neither genuine nor relevant in respect of the gift deed and he has also an opportunity to adduce rebuttal evidence in this regard. As such, the same in no way affect the rights of the petitioner/plaintiff or cause prejudice to the petitioner.

The learned Counsel for the petitioner states after passing the order in both the revision petitions that the said two documents are already marked on behalf of defendants 2 to 5 in chief examination by way of affidavit in chief. If that be so, marking of documents is only for identification and the same is subject to defendants 2 to 5 proving its genuineness or relevance and subject to cross examination of the witness by the plaintiff. In view of the above, question of affecting or causing prejudice to the rights of the petitioners does not arise.

For the foregoing discussion, I do not see any valid or tenable ground to interfere with the orders of the Court below.

The Civil Revision Petitions are dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petitions shall stand closed in consequence. No order as to costs.

JUSTICE VILAS V.AFZULPURKAR

DATED 1st December, 2015.

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