

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

**CIVIL REVISION PETITION No.4155 of 2014**

-  
-  
**ORDER:**  
-

This Civil Revision Petition is filed challenging the order dt.29-10-2014 in I.A.No.19 of 2014 in O.S.No.16 of 2014 of the Sub-Divisional Magistrate (Mobile Court, Bhadrachalam.

2. The petitioners herein are defendants in the suit.
3. The respondent and petitioners are sisters and are children of one Uchala Venkata Ratnam, who is said to have died on 04-02-2013.
4. She filed O.S.No.16 of 2014 seeking a perpetual injunction restraining the petitioners from interfering with her possession and enjoyment of the plaint schedule properties. The respondent/plaintiff claimed the plaint schedule properties, which are a house property and a shop room on the basis of a registered Will dt.28-12-2012 allegedly executed in her favour by her father excluding the petitioners.
5. Along with the suit, she filed I.A.No.19 of 2014

seeking a temporary injunction restraining the petitioners from interfering with her alleged possession and enjoyment of the plaint schedule properties. Along with the plaint, she filed only copy of the registered Will executed by her father, death certificate of her father and Aadhar card copy.

6. Initially *ad interim* injunction was granted on 23-01-2014 on the basis of this material.

7. Counter affidavit was filed by petitioners denying that respondent is in possession of the plaint schedule properties. They also disputed the Will set up by respondent. They alleged that 2<sup>nd</sup> petitioner is in possession of the plaint schedule properties along with 1<sup>st</sup> petitioner and also paying house tax and electricity bills to the said property.

8. By order dt.29-10-2014, the Court below made the *ad interim* injunction absolute. It held that the petitioners did not give any cogent reason in their counter or during the course of arguments for not questioning the Will executed by late Venkata Ratnam or any other corroborative evidence to establish that the Will deed is not at all executed by Venkata Ratnam and that they are residing in the plaint schedule property. It was further

pointed out that in the cause title in the plaint, the respondent had specifically shown the petitioners as residents of Narsingpeta and Rajupeta village respectively and if petitioners are residing in the plaint schedule property, they should have disputed their address shown in the cause title of the plaint. It therefore held that respondent is in possession of the plaint schedule properties and that *prima facie* case and balance of convenience lies in her favour.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioners contended that respondent had not filed documents such as house tax receipt, electricity bill or water consumption bill or even third party affidavits of her neighbours to establish her possession of the plaint schedule properties and merely on the basis of a registered Will, the Court below had granted injunction in favour of respondent and also made it absolute. He also contended that the reasoning given by the Court below that petitioners should give cogent reason in their counter why the Will deed set up by respondent should not be believed, is perverse. He also pointed out that merely because respondent had shown the petitioners as residents of Narsingpeta village and Rajuepta village respectively, it cannot be concluded that

respondent is in possession of the plaint schedule properties.

11. Learned counsel for respondent, on the other hand, refuted the above contentions and supported the order passed by the Court below. He contended that there is a registered Will deed executed in favour of respondent by her father and therefore it should be presumed to be true and it was not necessary for respondent to file any other material in support of her plea that she is in possession of the plaint schedule properties.

12. I have noted the submissions of both sides.

13. In a suit for injunction or in an application seeking temporary injunction, the plaintiff has to prove his possession over the schedule property on the date of filing of the suit. The finding as to the possession of plaintiff should be based on some material indicating the possession of plaintiff. There is no presumption in law that a registered Will is a genuine document. It is settled law that the execution of the Will has to be proved by examining at least one attestor thereof.

14. In the present case, except the registered Will allegedly executed by late Venkata Ratnam in her favour, the respondent has not filed any other documents such as

house tax receipts, electricity bills or water bills or even third party affidavits of neighbours. Therefore merely on the basis of registered Will set up by her, the Court below could not have held that she is in physical possession and enjoyment of the plaint schedule properties on the date of filing of the suit.

15. The observations of the Court below that the petitioners should have given cogent reason in their counter or during arguments for not questioning the registered Will set up by respondent or that they should have filed corroborative evidence to establish that the Will deed was not executed, in my considered opinion are contrary to law and perverse. Such evidence would have to be adduced during trial by either party. Also mere fact that respondent had shown that petitioners are residents of Narsingpeta village and Rajupeta village respectively and the petitioners in their counter filed in I.A. have not raised any objection thereto, does not automatically lead to a conclusion that it is the respondent, who is in possession of the plaint schedule properties. In this view of the matter, I am of the opinion that the order passed by the Court below cannot be sustained.

16. Therefore, the Civil Revision Petition is allowed, and the order dt.29-10-2014 in I.A.No.19 of 2014 in O.S.No.16

of 2014 is set aside. However, the Court below is directed to decide the suit uninfluenced by any observations in this order or in its order dt.29-10-2014 in I.A.No.19 of 2014 referred to above. No costs.

17. The Court below shall endeavour to dispose of the suit expeditiously preferably within a period of six months from the date of receipt of a copy of this order.

18. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

---

**JUSTICE M.S. RAMACHANDRA RAO**

Date: 09-07-2015

Vsv