

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.2025 of 2015

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05.06.2015

Between:

Malempati Narasimha Rao and another

...Petitioners

And

Chapalamadugu Kotamma and others

...Respondents

Counsel for the petitioners: Mr.K.V.Bhanu Prasad

Counsel for respondents: --

The Court made the following:

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ORDER:

This civil revision petition arises out of the order, dated 07.04.2015 in I.A.No.312 of 2015 in O.S.No.435 of 2012 on the file of learned Principal Senior Civil Judge, Narasaraopet.

I have heard Mr.K.V.Bhanu Prasad, learned counsel for the petitioners, and perused the record.

The petitioners filed the aforementioned suit for partition and separate possession in the suit schedule properties against the respondents. Respondent No.2 filed a written statement contesting the suit. She has set up the plea that the properties belong to her mother and that she bequeathed the same in favour of the respondents by way of registered Will, dated 26.08.2005, which was marked as

Ex.B-5. After completion of trial and when the suit was coming up for arguments, the petitioners filed the aforesaid I.A. under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') for comparison of the signatures on Ex.B-5 with that contained in Ex.B-4. This application was resisted by respondent No.2. By the order under revision, the lower Court has dismissed the said application.

A perusal of the order of the lower Court shows that it has dismissed the application mainly as belated. Though I am not in complete agreement with the reasoning of the lower Court, I am, however, not inclined to interfere with its order for the simple reason that the initial burden lies on the proponent of the Will viz., respondent No.2 to prove the execution of the same by her mother in favour of the respondents. When the petitioners have disputed the genuineness of the Will, the burden heavily lies on respondent No.2 to prove the same. If at all respondent No.2 should have filed such an application. In any event, the opinion of an expert has only evidentiary value and eventually the Court is entitled to compare the signatures under Section 73 of the Act. In the event the Court feels any difficulty in deciding the dispute based on such comparison, it shall be free to it to send the document for expert's opinion. For the aforementioned reasons, I am not inclined to interfere with the order of the lower Court.

Subject to the above observations, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, C.R.P.M.P.No.2682 of 2015 filed by the petitioners for interim stay shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

05th June, 2015

GHN