

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

CIVIL REVISION PETITION NO.3205 OF 2015

DATED:11-9-2015

Between:

Talasila Atchyutha Ramaiah ... Petitioner

And

Talasila Venkateswara Rao

and another ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mrs. Nimmagadda Revathi, for

Mr. Nimmagadda Satyanarayana

COUNSEL FOR THE RESPONDENTS: Mr. A. Ramakrishna

THE COURT MADE THE FOLLOWING:

ORDER:

-

This civil revision petition arises out of order dt.20.7.2015 in I.A. No.450 of 2015 in O.S. No.32 of 2010, on the file of the Senior Civil Judge, Repalle.

I have heard Mrs. Nimmagadda Revathi, learned counsel for the petitioner, and Mr. A Ramakrishna, learned counsel for respondent No.2.

The petitioner filed the above mentioned suit against the respondents for partition

and separate possession of his share in the suit schedule property. Respondent No.1 has not contested the suit. In the written statement filed by respondent No.2, who is the sister of the petitioner, she has taken a plea that her mother has executed an unregistered Will in her favour bequeathing all the suit schedule property to her and that therefore the petitioner is not entitled to partition. The petitioner has filed I.A. No.450 of 2015 under Order 16 Rule 6 of the Code of Civil Procedure, for summoning the Sub-Registrar, Cherukupalli, to produce the Left Thumb Impression Register in order to verify the genuineness or otherwise of the Will set up by respondent No.2. The lower Court dismissed the said petition. Feeling aggrieved by the same, the petitioner filed this revision petition.

The only ground on which the lower Court has dismissed the petitioner's application is that it is belated. No doubt, the petitioner filed the I.A. after completion of the trial and when the case was being adjourned from time to time for arguments. However, it is the case of the petitioner that he has earlier filed an application under Section 45 of the Indian Evidence Act, 1872 (for short, 'the Act'), for sending the Will set up by respondent No.2 to a handwriting expert for comparison with the admitted signature of his mother on Registered sale deed dt.11.6.1990, which was marked at the instance of respondent No.2 as Ex.B.14. Learned counsel for the petitioner submitted that the petitioner has also filed I.A. for summoning the above mentioned original sale deed from the vendee. She has further submitted that both these applications have become abortive as the vendee under the original sale deed has stated before the Court that the original document was not available with him and that for that reason the petitioner could not pursue the application filed under Section 45 of the Act. The lower Court has not taken these aspects into consideration while observing that the suit underwent thirty adjournments at the stage of arguments. In the light of the fact that the petitioner is seriously disputing the genuineness of the Will set up by respondent No.2, unless this aspect is decided by the lower Court, based on relevant evidence, the suit cannot be properly and effectually decided. Therefore, on the facts of the case, I am of the opinion that the lower Court ought to have allowed the application by putting the petitioner on reasonable terms.

Accordingly, I.A. No.450 of 2015 is allowed subject to the petitioner paying costs of Rs.5,000/- (Rupees five thousand only) to respondent No.2 within two weeks from the date of receipt of copy of this order and filing proof of the same before the lower Court.

The civil revision petition is accordingly allowed.

As a sequel to disposal of the civil revision petition, C.R.P.M.P. No.4278 of 2015 shall stand disposed of as infructuous.

---

C.V. NAGARJUNA REDDY, J

11-9-2015

bnr