

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.543 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.19.11.2014 in I.A.No.95 of 2013 in O.S.No.40 of 2011 on the file of XXVII Additional Chief Judge, C i t y Civil Court, Secunderabad.

2. The petitioner herein is 3rd defendant in the above suit.

3. The 1st respondent/plaintiff filed the said suit for partition of plaint schedule properties and for half-share to her and to 2nd defendant in respect of plaint 'A' schedule property, for 1/5th share to herself and to all the respondents in the plaint 'B' schedule property, and other reliefs.

4. The respondent nos.1 and 2 herein are daughters of U.R. Mohan Rao, and petitioner and respondent nos.3 and 4 are the sons of late U.R. Mohan Rao.

5. The 3rd respondent/2nd defendant herein is admittedly of unsound mind.

6. The 1st respondent therefore filed I.A.No.95 of

2013 under Order 32 Rule 3 (2) C.P.C. seeking appointment of 4th respondent herein as a guardian and next friend of 3rd respondent. The petitioner herein opposed the said application. The 4th respondent filed a memo stating that he had no objection to act as a guardian and next friend of 3rd respondent.

7. By order dt.19.11.2014, the Court below allowed the said application. It observed that 1st respondent's plea was that late U.R. Mohan Rao executed a Will in respect of plaint 'A' schedule property giving a half-share therein to herself as well as to 3rd respondent herein, and since the said Will is being disputed by petitioner, he cannot act as a guardian to 3rd respondent.

8. Challenging the same, the present Revision is filed.

9. Heard Sri T. Surya Satish, counsel for petitioner; and Sri P. Sashi Kiran, counsel for 1st respondent.

10. The counsel for petitioner contended that his client had filed O.P.No.607 of 2012 before the I Additional Chief Judge, City Civil Court, Secunderabad under Section 52 of the Mental Health Act, 1987 to appoint him as a guardian of 3rd respondent; that the said O.P. was allowed on 01.07.2013 appointing him as a guardian in respect of

the person and property of 3rd respondent; and therefore, he should be appointed as a guardian of 3rd respondent in respect of 4th respondent.

11. On the other hand, the counsel for 1st respondent refuted the said contentions. He contended that petitioner had not disclosed about the order in the O.P. in the counter-affidavit filed in the Court below or in the submissions made before the Court below; the said order had been obtained without impleading the other siblings of 3rd respondent; that notice by way of publication in '*Visalandhra*' daily was taken in O.P.No.607 of 2012, which newspaper has no circulation in Hyderabad where the respondent nos.1, 2 and 4 resided, and therefore, no weight should be given to the said order. He also contended that since petitioner is disputing the Will set-up by 1st respondent and 4th respondent, and since under the said will a half-share in the plaint 'A' schedule property was given to 3rd respondent, the interest of petitioner is adverse to 3rd respondent; and therefore, the Court below had rightly not appointed him as guardian and next friend of 3rd respondent.

12. I have noted the submissions of both sides.

13. Under the Will dt.14.12.1999 executed by late U.R. Mohan Rao, and pleaded by 1st respondent, the plaintiff

would get half-share in the plaint 'A' schedule property, but if the Will is disbelieved, he would get only 1/5th share therein.

14. Since the petitioner is disputing the said Will, the interest of petitioner is clearly adverse to that of 3rd respondent.

15. In this view of the matter, notwithstanding the fact that petitioner obtained the order dt.01.07.2013 in O.P.No.607 of 2012, and since the said order was obtained after the present suit had been filed without impleading respondent nos.1, 2 and 4, I am of the opinion that the Court below was correct in not appointing the petitioner as guardian and next friend of 3rd respondent.

16. Therefore, the Revision fails, and it is accordingly dismissed. No order as to costs.

17. Since the suit is of the year 2011, the Court below is directed to expedite hearing of the suit.

18. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-10-2015

Ndr/*