

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

CIVIL REVISION PETITION No.1638 of 2015

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01.05.2015

Between:

Ranjana Kucheria and others

...Petitioners

And

B.Meena Bai and others

...Respondents

Counsel for the petitioners: Mr.Pratap Narayan Sanghi

Counsel for respondents: --

The Court made the following:

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ORDER:

This civil revision petition arises out of the order, dated 05.02.2015 in I.A.No.17 of 2013 in O.S.No.1302 of 2003 on the file of the learned VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

I have heard the learned counsel for the petitioners and perused the record.

The respondents filed the aforementioned suit for perpetual injunction restraining the petitioners from interfering with their possession over the plaint schedule properties. It is their pleaded that one Domakunta Pentaiah was the original owner of the property and that he executed agreement-cum-power of attorney in favour of one Rajendra Prasad Yadav, who is none other than the husband of respondent No.1

and who in turn has formed Welfare Society under the name and style of Sri Sai Nagar Colony Welfare Society and sold A to C schedule properties to the respondents under the registered sale deeds.

On the other hand, the petitioners pleaded that they have purchased the property from one Dandigala Pentaiah under registered sale deeds. The respondents have filed the aforesaid I.A. under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') for sending Ex.A-6 – G.P.A. stated to have been executed by Domakunta @ Dandigala Pentaiah in favour of said Rajendra Prasad Yadav, the vendor of the respondents and Exs.B-1 to B-5, sale deeds executed by Dandigala Pentaiah, in order to compare the thumb impressions. The lower Court, by the order under revision, allowed the said application.

Sri Pratap Narayan Sanghi, learned counsel for the petitioners, submitted that for the first time in the aforesaid I.A., the respondents have come out with the plea that Domakunta Pentaiah and Dandigala Pentaiah are one and the same and that as Ex.A-6 was executed by Domakunta Pentaiah, and Exs.B-1 to B-5 were executed by Dandigala Pentaiah, the thumb impressions will not tally and therefore, such comparison is a futile exercise. He has further submitted that the trial in the suit was completed as far back as the year 2011 and that the aforesaid I.A. is filed at the belated stage.

A perusal of the plaint shows that the respondents have pleaded that one D. Pentaiah executed the G.P.A. while it is the case of the petitioners that Exs.B1 to B5 were executed by Dandigala Pentaiah. In the affidavit filed in support of the aforesaid I.A., the respondents have pleaded that Domakunta @ Dandigala Pentaiah executed Ex.A-6. If the petitioners are disputing the claim of the respondents that Domakunta Pentaiah and Dandigala Pentaiah are not two different persons, such a plea should have been taken in the counter-affidavit filed in the aforesaid I.A. No whisper has been raised in that regard in their counter-affidavit filed in the I.A. As the submission of the learned counsel for the petitioners is not supported by the pleadings, the same is rejected.

With respect to the delay in filing the I.A., in my opinion, the delay cannot constitute sole ground for rejecting the application filed under Section 45 of the Act. The lower Court, in order to completely and effectually adjudicate the dispute, felt it appropriate to send the thumb impressions contained on the documents filed by the rival parties for comparison. Therefore, the discretion exercised by the lower Court need not be interfered with on the ground of delay.

For the aforementioned reasons, the Civil Revision Petition fails and the same is accordingly dismissed.

As a sequel to dismissal of the Civil Revision Petition, C.R.P.M.P.No.2201 of 2015 filed by the petitioners for interim stay shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

01st May, 2015

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