

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition Nos.2793 and 3050 of 2014

Between:

Prava Venkata Gowri Maha Lakshmi

... Petitioner(s)

and

Peesapati Vardhanamma (died)
and three others.

... Respondent(s)

DATE OF JUDGMENT PRONOUNCED: ***04th August, 2015.***

SUBMITTED FOR APPROVAL:

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

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| 1 | Whether Reporters of Local newspapers may
be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | Yes/No |

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**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

Civil Revision Petition Nos.2793 and 3050 of 2014

COMMON ORDER:

Since these two revisions arise between the same parties
and out of the same suit, they are being disposed of by this
common order.

2. The petitioner in both these Revisions is 2nd defendant in the suit O.S.No.316 of 2005 on the file of I Additional Junior Civil Judge, Tanuku. Respondents 1 and 2/plaintiffs filed the said suit against the petitioner and respondents 3 and 4 for an injunction directing the 3rd respondent to cooperate in executing a partition deed and to get it registered between the 1st respondent and the 3rd respondent and for costs.

3. The 2nd defendant allegedly engaged an advocate by name Kamarsu Sreenivasa Rao of Tanuku and a Vakalatnama said to have been signed by her was filed into Court on 25.07.2005. She was set ex parte on 28.09.2005. Issues were framed, trial concluded and the matter was coming up for pronouncement of judgment.

4. At that stage, the petitioner filed I.A.No.225 of 2013 under Order IX Rule 7 CPC contending that at the time of filing of the suit, her husband was working in Indian Railways as Station Manager at Balaghat, Madhya Pradesh; he retired on 31.01.2005 but they stayed there till 2011 and thereafter they shifted to Hyderabad, where her sons are employed. She contended that no summons either in the suit or in any other proceedings were served on her and she never come down to Tanuku and gave Vakalatnama to the advocate by name Sri Kamarsu Sreenivasa Rao of Tanuku and the signature purporting to be of her on Vakalatnama was a forged one. She further contended that she was not aware of the suit

proceedings and she used to sign in English on every occasion. She also disputed her signature on the Will dt.01.12.1986 relied on by respondents 1 and 2, and alleged that it is also a forged signature. She stated that she came down to Tanuku on 31.03.2013 and when she visited the plaint schedule property and made enquiries, she came to know that she was shown as 2nd defendant in the suit and also came to know about the things which transpired in the suit. She contended that she is entitled to 1/3rd share in the plaint schedule property and the Will dt.01.12.1986 set up by the plaintiff is a forged and fabricated one. She therefore prayed the Court to set aside the order dt.28.09.2005 setting her ex parte in the suit and to give her an opportunity to contest the suit.

5. She also filed I.A.No.224 of 2013 to reopen the suit raising the same pleadings and contending that she had already filed I.A.No.225 of 2013 under Order IX Rule 7 CPC and since the suit was posted for judgment, it is just and necessary to reopen the suit and give her an opportunity to defend it.

6. Counter affidavits were filed to both the applications by respondents 1 and 2 denying the allegations made by the petitioner and contending that the petitioner had invented the theory of forgery only for the purpose of these applications and that she is aware of the suit proceedings. It is alleged that petitioner has given a notarized affidavit after coming to Tanuku

about the attestation of the Will but now she is resiling from it.

7. By separate orders dt.23.06.2014, the Court below dismissed I.A.No.224 of 2013 and I.A.No.225 of 2013. It held that notice was admitted to be served on the petitioner by a registered post showing her address as R/o Baraghat, Nagpur and it was returned with postal endorsement which was indecipherable since a portion of the postal cover was torn. It further held that three or four times summons sent through registered post were stamped by Nagpur Postal Department and that, eight years after the suit was filed, at the stage when the matter was coming up for judgment, these applications have been filed contending that the signature on the Vakalatnama given to the advocate Kamarsu Sreenivasa Rao of Tanuku was not the petitioner's signature. It further held that there was no way the petitioner could have come to know about the Court proceedings pending against her since no ordinary prudent man would think that any case is instituted against him or her and without any valid proof, it cannot be accepted that the Vakalat filed by the counsel was not given by her.

8. Challenging the same, these two Revisions are filed.

9. Heard Sri K.Srinivasa Rao, Counsel for the petitioner and Sri T.V.S.Prabhakar Rao, Counsel for the 2nd respondent. Respondents 1 and 3 died and no steps were taken. Although 4th respondent served, there is no representation on his behalf.

10. Counsel for the petitioner contended that the reasoning

given by the Court below is perverse; that the petitioner's husband was a R/o Balaghat, Madhya Pradesh; that her address in the suit was wrongly shown as a R/o of Baraghat, Nagpur while she was a R/o of Balaghat in Madhya Pradesh; that she had never given a Vakalatnama to any advocate at Tanuku much less to Kamarsu Sreenivasa Rao and the signature purporting to be her's on the Vakalatnama filed by the said advocate, is a forged one and without conducting any enquiry into the matter, it was not open to the Court below to reject both the applications.

11. Counsel for the respondents 1 and 2 on the other hand refuted the above contentions and supported the order passed by the Court below.

12. I have noted the submissions of both sides.

13. It is true that the case is posted for judgment when the applications have been filed by the petitioner to set aside the orders setting her ex parte on 28.09.2005 and to reopen the suit. However, the allegations made by the petitioner are very serious in nature and if found true, would go to the root of the matter and establish that fraud has been played on the Court and also on the petitioner. If found true, the identity of the person who is responsible for this is a matter for enquiry by the Court. However, if the allegation is found to be false, the petitioner would have to face the consequences for making such allegations.

14. Having regard to the contention of the petitioner that her husband was a R/o of Balaghat, Madhya Pradesh State and since the petitioner was shown to be a R/o Baraghat, Nagpur in Maharashtra State in the plaint, it is possible that the address of the petitioner was not correctly shown in the plaint by respondents 1 and 2. Of course this fact can be established by evidence if an opportunity is given to the petitioner to establish the same.

15. The reasoning of the Court below, in my considered opinion, is perverse and the Court should not be bothered about as to how the petitioner came to know about the Court proceedings filed against her but should go into the question of allegation made by the petitioner and decide whether the said allegation is true or not. It is perfectly possible that the Vakalat of the petitioner does not contain her signature and the advocate who filed the Vakalat might not be aware of a possible impersonation of the petitioner.

16. In view of the above, I am of the opinion that the Court below has to conduct an enquiry into the allegations made by the petitioner by giving her an opportunity to lead evidence in that regard. This can only be done, if orders dt.23.06.2014 in I.A.No.225 of 2013 and I.A.No.224 of 2013 are set aside and they are remitted back to the Court below.

17. So both the Civil Revision Petitions are allowed; orders dt.23.06.2014 in I.A.No.225 of 2013 and I.A.No.224 of 2013 are set aside; and both the I.As. are remitted back to the Court

below to give an opportunity to the petitioner and respondents 1 and 2 to lead evidence on the allegations made by the petitioner in the said applications. After evidence is let in by both parties, the Court below shall decide both applications, and if the allegations made by the petitioner are found to be true, action in accordance with law shall be initiated against the persons found responsible for forging the signature of the petitioner on the Vakalat filed by the advocate Sri Kamarsu Sreenivasa Rao of Tanuku and against any other person found involved and responsible for the same. However, if the allegations made by the petitioner are found to be false, appropriate action can also be initiated against the petitioner. This exercise shall be completed by the Court below within a period of two (02) months from the date of receipt of a copy of this order and till this exercise is concluded, the judgment in the suit shall not be pronounced. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

04th August, 2015.
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