

HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.107 of 2015

-

ORDER:

Plaintiff in O.S.No.21 of 2006, on the file of the Court of the Senior Civil Judge, Karimnagar, is the petitioner in the present Civil Revision Petition, filed under Article 227 of the Constitution of India. In the instant Civil Revision Petition, challenge is to the order dated 05.11.2014 passed by the said Court in I.A.No.633 of 2014.

2. Heard Sri M.Rajamalla Reddy, learned counsel for the petitioner and Sri D.Pochaiah, learned counsel for the respondent apart from perusing the material available before the Court.

3. Petitioner herein instituted O.S.No.21 of 2006 against the respondent for declaration of title and perpetual injunction in respect of the Plot admeasuring 296.84 sq. yards in Sy.No.916 situated at Rampur area, Karimnagar. In the said suit, plaintiff/petitioner filed I.A.No.633 of 2014 under Order 13 Rule 10 of the Code of Civil Procedure (hereinafter called 'the Code') to call for the Registered Gift Settlement Deed bearing Doc.No.6046/2005 dated 12.05.2005 from the Court of the Principal Junior Civil Judge, Karimnagar in O.S.No.258 of 2006.

4. The defendant/respondent opposed the said application by way of filing counter. The learned Senior Civil Judge, Karimnagar by way of an order dated 05.11.2014 dismissed I.A.No.633 of 2014. Calling in question the validity and the legal sustainability of the said order, the present revision has been filed.

5. It is contended by the learned counsel for the petitioner that the impugned order is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 13 Rule 10 of the Code. It is further contended that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order under challenge would not have emanated.

6. It is nextly contended by the learned counsel that the learned Senior Civil judge ought to have called for the Registered Gift Settlement Deed in the interest of justice and the Court below erred in holding that it is the look after of the respondent/defendant to prove his case that he is the absolute owner of 130 sq

yards. It is also the submission of the learned counsel that in view of the liberty given in CRP.3922 of 2013 and in view of the observations made by the learned Principal District Judge in O.P.No.356 of 2014, the learned Senior Civil Judge, grossly erred in dismissing the application.

7. On the contrary, reiterating the contents of the counter filed before the Court below, it is contended by the learned counsel for the respondent that the application filed by the petitioner herein is only for prolonging the matter. It is also submitted that the allegation of the petitioner that Ex.B.8 document is a forged one is totally unwarranted and is false. It is also the submission of the learned counsel that the father of the petitioner herein namely, Ponnamm Ramulu executed the subject Gift Settlement Deed in favour of the respondent and the said fact is well known and the respondent also examined DW.2, attester of Ex.B.8 document and the petitioner elicited nothing contrary to the case of the respondent. It is also the contention of the learned counsel for the respondent that in view of dismissal of I.A.No.351 of 2013 and Transfer O.P.No.356 of 2014, the present application is liable to be dismissed. It is further submitted that the plaintiff/petitioner herein is required to prove his own case independently and the weakness if any of the other side cannot be a ground for the petitioner.

8. In the above background, now the issues that emerge for consideration of this Court are:

1. Whether the order impugned is in accordance with the provisions of Order 13 Rule 10 of the Code of Civil Procedure?
2. Whether the Order under challenge warrants any interference of this Court under Article 227 of the Constitution of India?

9. The provision of law, which is germane and relevant for the purpose of resolving the issues in the present revision, is Order 13 Rule 10 of the Code, which reads as *infra*:

“10. Court may send for papers from its own records or from other courts.- (1) The court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant

cannot without unreasonable delay or expense obtain duly authenticated copy of the record or of such portion thereof as to applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.”

10. The above provision of law authorizes and empowers the Court, either upon an application of a party to the suit or *suo motu* to call for the records and inspect them. Sub-Rule (2) of Rule 10 of Order 13 mandates the filing of a supporting affidavit showing how the record is material and as to how the production of the records is necessary.

11. As per the affidavit filed in support of I.A.No.633 of 2014, it is the case of the petitioner herein that Ex.B.8/Gift Deed, which is marked as Ex.A.1 in O.S.No.258 of 2006, on the file of the Court of the Principal Junior Civil Judge, Karimnagar is a forged document. A perusal of the supporting affidavit in I.A.No.633 of 2014 vividly discloses that the very basis for filing the application is the orders passed by this Court in CRP.No.3922 of 2013 dated 02.04.2014 and the orders passed by the learned Principal District Judge, Karimnagar in Transfer O.P.No.356 of 2014 dated 02.09.2014.

12. Earlier, the petitioner herein filed I.A.No.351 of 2013 for a direction to produce the Original Gift Deed bearing Doc.No.6046/2015 dated 12.05.2005 and by way of an order dated 06.03.2013, the learned Senior Civil Judge, Karimnagar dismissed the said application. Assailing the validity of the said order, the petitioner herein filed CRP.No.3922 of 2013. This Court, by way of an order dated 02.04.2014, disposed of the said revision and the operative portion of the said order, reads as under:

“As seen from the record, admittedly, the original of Ex.B.8 herein is marked as Ex.P.1 in O.S.No.258/2006 on the file of Principal Junior Civil Judge’s Court, Karimnagar, which is filed by the respondent- defendant against the revision petitioner herein.

In that view of the matter, without going into the merits of the impugned order, present Civil Revision Petition is disposed of with liberty to the revision petitioner to file an appropriate application before the Court below seeking to call for Original Gift Settlement Deed marked as Ex.P.1

in O.S.No.258 of 2006 on the file of Principal Junior Civil Judge's Court, Karimnagar. Miscellaneous petitions pending in this revision, if any, shall stand closed."

13. Subsequently, petitioner herein filed Transfer O.P.No.356 of 2014, on the file of the Court of the Principal District Judge, Karimnagar. The learned Principal District Judge, by way of an order dated 02.09.2014 dismissed the said application, and the paragraphs 7 and 8 of the said order, reads as under:

"7. Petitioner herein filed O.S.No.21/2006 on the file of Senior civil Judge, Karimnagar for the relief of declaration of title and for perpetual injunction with regard to suit property of 296.84 Sq. yds., in Sy.No.916 claiming that the said property was purchased by him from one K.Vijaya Laxmi. As seen from the written statement filed by defendant in O.S.No.21/2006, it is contended that plaintiff claiming his title to the property in Sy.No.916 is trying occupy the land belonging to defendant, which is in Sy.No.917. Respondent herein filed O.S.No.258/2006 against petitioner herein for perpetual injunction with regard to his property of 130 sq. yds., in Sy.No.197 of Rampur locality of Karimnagar Town. Since the suit filed by petitioner herein in O.S.No.21/2006 for declaration of title and perpetual injunction based on the sale deed said to have been executed by one K.Vijaya Laxmi, it is for the petitioner to establish his title under the said document. Respondent herein, who is claiming his rights over his property in Sy.No.917, has to necessarily file his document, i.e., gift settlement deed, to defeat the claim of plaintiff in O.S.No.21/2006. It is further observed that the Hon'ble High Court by its orders, dated 02.04.2014 in CRP.No.3922/2013 directed the petitioner herein to file a petition to call for the original gift settlement deed from O.S.No.258/2006 from the file of Prl. Junior Civil Judge, Karimnagar and in the light of the specific direction given by the Hon'ble High Court, the petitioner herein is certainly entitled to get the original gift settlement deed called for from O.S.No.258/2006 and since the very suit filed by the petitioner herein in O.S.No.21/2006 is based on a registered sale deed, the question of declaration of title of the petitioner herein in O.S.No.21/2006 depends upon his title deed, petitioner being given a chance by the Hon'ble High Court to call for the original gift settlement deed from O.S.No.258/2006 on the file of Prl. Junior Civil Judge, Karimnagar, I find that there is no need to transfer O.S.No.258/2006 from the file of Prl. Junior civil Judge, Karimnagar. Since it is said that the trial in O.S.No.21/2006 is already completed, the petitioner herein can as well ask for stay of the proceedings in O.S.No.258/2006 under Sec.11 of CPC., till disposal of O.S.No.21/2006. With these observations, I find that there is no need to transfer O.S.No.258/2006 from the file of Prl. Junior Civil Judge, Karimnagar to the file of Prl. Senior Civil Judge, Karimnagar.

8. In the result, the petition is dismissed.”

14. While referring to the above said orders, it is the emphatic contention of the learned counsel for the petitioner that the petitioner is entitled for the relief sought in the present I.A.

15. Obviously, the principal contention of the learned counsel for the petitioner is that in view of the liberty granted by this Court in CRP.No.3922 of 2014 to file application to call for the subject document and having regard to the observations made by the learned Principal District Judge, Karimnagar in Transfer O.P.No.356/2014, the Court below ought to have granted the relief in favour of the petitioner herein. The said contention in the considered and definite opinion of this Court, cannot be accepted. The liberty granted by this Court in CRP.No.3922 of 2013, by any stretch of imagination, cannot be construed nor can be interpreted as one which automatically entitles the petitioner to get the relief. Unless the party applying for satisfies the necessary ingredients of the relevant provisions, he or she is not entitled for the relief. As rightly observed by the Court below, the petitioner herein is obligated to prove his case and weakness, if any, in the case of the respondent, cannot be a ground for his success. Since the petitioner is claiming title to the subject property, it is his obligation to prove the same by adducing necessary evidence in support of the same.

16. A perusal of the order impugned manifestly discloses that the learned Senior Civil Judge dealt with the issue in an elaborate manner and recorded valid and convincing reasons for arriving at the conclusions.

17. It is a settled and well established proposition of law that unless the order impugned suffers from patent perversity and jurisdictional error, the invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. In the case on hand, this Court does not find either perversity or jurisdictional error to meddle with the order under revision.

18. For the aforesaid reasons, the Civil Revision Petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:22.04.2015

grk



HON'BLE SRI JUSTICE A.V.SESHA SAI

-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-
-
-
-

CIVIL REVISION PETITION No.107 of 2015

Date :22.04.2015

grk

-

HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.107 of 2015

Date :22.04.2015

-

Between:

Annadi Malla Reddy s/o Parsharam Reddy,
Aged about 45 years, Singareni Employee,

r/o Quarter No.T2-226, Power House Colony,
Godavarikhani, Karimnagar District. ... Petitioner

and

Ponnam Mallesham s/o Ramulu,
Aged about 49 years, Occ: Driver in RTC,
R/o. H.No.8-81/1, LMD Colony,
Thimmapur, Karimnagar

... Respondent