

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISION PETITION Nos.1618 and 1854 of 2015

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COMMON ORDER:

Since these two revisions are inter-related and arise out of one suit and as the parties are also the same, this Court deems it apt and appropriate to dispose of these two revisions by way of this common order.

2. Heard Sri M.S.R.Subrahmanyam, learned counsel for the petitioners and Sri M.Sudheer, learned counsel for the respondent.

3. The respondent herein instituted suit O.S.No.224/2009, on the file of the Court of the I Additional Junior Civil Judge, Ongole against the petitioners herein, seeking permanent injunction. In the said suit, when the matter was coming up for arguments, the respondent herein filed two interlocutory applications viz., I.A.Nos.713 and 714 of 2014 under the provisions of Section 151 and Order 16 Rules 1 and 5 of the Code of Civil Procedure, seeking to reopen the matter and to summon Smt.Pathan Khasimbi to speak about the sale transaction dated 05.12.1994 in between her and Cheedara Ramanamma under a registered sale deed.

4. Resisting the said applications, the petitioners herein filed counter. The learned I Additional Junior Civil Judge, Ongole, by way of orders dated 13.02.2015, allowed the said applications filed by the respondent herein. Calling in question, the validity and the legal sustainability of the said orders passed by the learned I Additional Junior Civil Judge, the present revisions have been filed under Article 227 of the Constitution of India.

5. It is contended by the learned counsel for the petitioners herein that the orders passed by the Court below are erroneous and contrary to law and are opposed to the very spirit and object of the provisions of the

Code of Civil Procedure. It is further submitted by the learned counsel that the learned Junior Civil Judge grossly erred in allowing the applications without assigning proper and cogent reasons. It is also the submission of the learned counsel for the petitioners that the orders impugned cannot be sustained as the respondent herein filed the said applications only for the purpose of deviating the issue.

6. Per contra, it is vehemently contended by the learned counsel for the respondent that there is no illegality nor any infirmity in the orders impugned, which warrant interference of this Court under Article 227 of the Constitution of India.

7. The material available before this Court manifestly discloses that the present applications were filed when the suit was coming up for arguments. In the affidavit filed in support of the present applications before the Court below, the respondent herein stated that it would be just and necessary to examine one Pathan Khasimbi, resident of Yendluru village on certain facts like sale transaction in between her and the executants of exhibit A.1 agreement of sale by name Ramanamma.

8. The defendants/petitioners herein strongly resisted the applications by way of filing counter, *inter alia*, contending that Ex.A.1 is a fabricated document and not executed by Smt.Cheedara Ramanamma and burden lies on the plaintiff/respondent herein to prove the execution of Ex.A.1 by Cheedara Ramanamma by producing the admitted thumb impression of Cheedara Ramanamma. The petitioners herein also stated in their counter that as the issue framed in the suit is whether the plaintiff is in possession of the plaint schedule property or not by the date of filing of the suit, the present applications are an attempt to divert the issue and to establish other issues which are not relevant to the fact in issue. The defendants/petitioners herein also stated in their counter affidavit that the plaintiff is trying to convert the nature of the suit also and the said Pathan Khasimbi is not a necessary

party. The defendants/petitioners herein also stated in the counter that the respondent herein instead of producing the registered document which he is admittedly in possession, filed these petitions only with a view to prolong the issue.

9. It is to be noted at this juncture, that the plaintiff and one Mr.Kotaiah and Venkateswarlu are the brothers and the defendants are the sons of Sri Kotaiah and Sri Venkateswarlu died leaving behind his wife Smt.Ramanamma, who is no more. It is the case of the plaintiff in the plaint that the suit schedule property fell to the share of said Venkateswarlu and the said Venkateswarlu died intestate on 27.11.1994, leaving behind him his wife as his legal heir and after the death of Sri Venkateswarlu his wife Ramanamma became the absolute owner of the suit schedule properties. It is further pleaded in the plaint that on 29.07.1995 plaintiff purchased the suit schedule properties from the said Ramanamma under a possessory agreement for valuable consideration and was put in possession of the suit schedule properties and since then the plaintiff is enjoying the properties without interruption from anybody. It is also stated in the plaint that the plaintiff made his efforts to perform his part of performance, but the said Ramanamma died on 22.11.1998 without executing the regular sale deed and leaving no legal heirs behind her.

10. On the other hand, in the written statement filed by the defendants, it is pleaded that Smt.Ramanamma and her husband lived jointly only for short period as wife and husband and Smt.Ramanamma discarded her husband and after that Venkateswarlu alone lived in the village along with Khasimbi and after the death of Venkateswarlu also Ramanamma did not turn up to the village and after the death of Venkateswarlu, the plaintiff and defendants being surviving legal heirs of Venkateswarlu, partitioned the schedule property equally and they are enjoying the same.

11. In the light of the pleadings available, the present applications

filed by the respondent herein would be irrelevant and the only question to be adjudicated in the suit is with regard to the possession of the property as on the date of suit.

12. As rightly stated by the learned counsel for the petitioners, undoubtedly the present applications are intended only for the purpose of dragging on the issue to a considerable length of time and the same cannot be permitted. The reasons assigned by the learned Judge cannot be the basis for allowing the applications filed by the respondent herein.

13. For the aforesaid reasons, the Civil Revision Petitions are allowed, setting aside the orders dated 02.12.2014 passed in I.A.Nos.713 and 714 of 2014 in O.S.No.224 of 2009, on the file of I Additional Junior Civil Judge, Ongole. Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:09.07.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Dated 09th July, 2015

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CIVIL REVISION PETITION Nos.1618 and 1854 of 2015

Dated 09th July, 2015

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Between:

Cheedara aVenkateswarlu S/o Kotaiah,
Hindu, aged 54 years, Agriculture, residing at
Inakollu Village and Mandal, Prakasam District
and two others.

... Petitioners

and

Cheedara Sree Ramulu s/o Yellamanda,
Hindu, aged 75 years, r/o Yendlluru Village,
S.N.Padu Mandal, Prakasam District.

... Respondents