

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

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CIVIL REVISION PETITION No.3315 OF 2013

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ORDER:

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This Revision is filed challenging the order dated 10.07.2013 in I.A.No.2164 of 2012 in O.S.No.32 of 2004 on the file of the Principal District Judge, Kadapa.

The petitioners herein are the legal representatives of the deceased plaintiff. The plaintiff had filed the suit against the respondent/defendant for specific performance of unregistered agreement of re-conveyance dated 17.04.2003, executed by the defendant in favour of the plaintiff. The defendant filed a written statement disputing the said claim. Issues were framed and trial was commenced.

The respondent/defendant then filed I.A.No.2164 of 2012 contending that the document referred to in the plaint as the agreement of re-conveyance was not the original agreement executed by him and that the plaintiff had fabricated it and then filed the suit. He also contended that after coming to know of the fabrication, he had filed an additional written statement taking the plea that the said agreement filed by the plaintiff is a forged one. The defendant contended that since the original agreement would not be with him and it would be with the plaintiff, he could prove the real agreement only by the secondary evidence and in that context, he needs to examine the document writer of the alleged real agreement and the stamp vendor who sold the stamp paper on which the said alleged real agreement was drafted. He, therefore, contended that it is just and necessary in the interests of justice to permit the defendant to adduce the evidence of these witnesses.

This application was admittedly filed on 16.10.2012, after service on the plaintiff. After waiting almost nine months, since no counter affidavit has been filed, by the docket order dated 10.07.2013, the Court below allowed the said application without assigning any reason on the ground that no counter affidavit is filed.

It is not in dispute that after the said order was passed on 10.07.2013, the respondent/defendant had in fact examined the said witnesses. However, after filing

of this revision only i.e., on 16.08.2013, interim stay was granted by this Court in C.R.P.No.3470 of 2013. Thus, the order impugned in Revision had in fact been implemented in the meantime.

Having regard to the above facts, this Revision is disposed of directing the Court below to frame an issue as to “whether the evidence which has been adduced by the respondent/defendant pursuant to the docket order dated 10.07.2013 passed by it in I.A.No.2164 of 2012 is admissible or not?” at the time of hearing of the suit and to decide it along with the other issues in the suit.

It is made clear that this Court had not expressed any opinion as to the correctness or otherwise of the docket order dated 10.07.2013 passed by the Court below in I.A.No.2164 of 2012. There shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

M.S.
RAMACHANDRA RAO, J

Date:15.04.2015

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