

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No. 4709 OF 2015

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ORDER :

This Civil Revision Petition is filed by the petitioner against order dated 23.09.2015 in I.A.No.819 of 2015 in O.S.No.128 of 2010 wherein the application filed by the petitioner under Order XVI Rule 5 and Section 151 CPC to issue summons to the Branch Manager, Andhra Bank, Guntakal Branch, to produce the account opening application of late T.Parvathamma wife of T.Venkat Reddy of Guntakal, dated 23.07.2003 was dismissed by the Court below.

2. It is the case of the petitioner that the respondents filed suit against the petitioner for declaration of their right, title and consequential relief of permanent injunction to the plaint schedule properties basing on a Will dated 03.10.2007. It is stated that deceased Parvathamma at the time of opening SB Account in Andhra Bank, Guntakal, signed specimen signatures in the account opening application dated 23.07.2003 and the same are only authentic signatures. That the signatures of deceased Parvathamma are very much required for comparison with handwriting expert and to decide the authenticity of the Will dated 03.10.2007. The same is opposed by the respondents on the ground that the petitioner filed similar petition to summon the application form of T.Parvathamma along with another petition under Section 45 of Indian Evidence Act. But the said petitions were dismissed for default and no steps were taken by the petitioner thereafter. That the trial of the suit has been completed and the plaintiff's counsel also submitted his arguments and when the matter was posted for defence arguments, present application is filed.

3. Heard learned counsel for the petitioner and learned counsel for the respondents.

4. A perusal of the order dated 23.09.2015 goes to show that such similar application i.e., I.A.No.396 of 2014 was allowed on 11.04.2014, but the petitioner has not taken any steps to pay process to summon the Branch Manager. The defendant side evidence was closed on 25.04.2014 and posted

the matter for arguments. Learned counsel appearing for the petitioner also submitted his arguments on 12.02.2015 and the matter was posted for defence arguments. As such, it cannot be said that the trial Court has not considered the issue properly and rightly dismissed the application. But the Will dated 03.10.2007 is disputed by the respondents themselves. In order to clinch the issue and also for adjudicating the *lis*, the Branch Manager is to be summoned for producing the account opening application of deceased Parvathamma.

Since the petitioner has not paid process for summoning the Branch manager for producing the account opening application of deceased Parvathamma, the CRP can be allowed on payment of costs to the respondent.

Having regard to the facts and circumstances, the Civil Revision Petition is liable to be allowed on condition of the petitioner paying Rs.5,000/- (Rupees five thousand only) towards costs to the first respondent within a period of three (3) weeks and also pays process within a period of three (3) weeks from the date of receipt of a copy of this order. Thereafter, the Court below shall proceed with the issuing of summons to the Branch Manager for production of account opening form as per the prayer in the I.A.No.819 of 2015. If the petitioner fails to pay the said costs, the CRP shall stand dismissed. Since the suit is of the year 2010, the Court below shall dispose of the suit as expeditiously as possible preferably within a period of two months.

Accordingly, the Civil Revision Petition is allowed to the extent indicated above. No costs. As a sequel thereto, miscellaneous petitions, if any, pending in this CRP shall stand closed.

A.RAJASHEKER REDDY, J

17.12.2015

Note: Issue CC within a week.

B/o. kvs

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