

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

C.R.P.No.5099 of 2014

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.09-10-2014 in I.A.No.576 of 2013 in O.S.No.83 of 2007 of the Principal Junior Civil Judge,.

2. Petitioner herein is the plaintiff in the above suit. The said suit was filed by petitioner against the respondents for specific performance of agreement of sale dt.21-10-2006 allegedly executed by 2nd respondent herein in his favour. He impleaded 1st respondent herein as a party in the suit (as 2nd defendant), contending in the plaint that 2nd respondent and 1st respondent had colluded with each other to create a sham and nominal document in favour of 1st respondent and others.

3. The 2nd respondent/1st defendant did not file any Written Statement denying the allegations in the plaint.

4. Written Statement was filed by 1st respondent/2nd defendant denying the plaint averments and contending that there is no agreement between 2nd respondent and the petitioner at all and the agreement of sale dt.21-10-2006 is an ante dated and forged document

unenforceable in law. He also alleged that 2nd respondent/1st defendant had agreed to sell some portion of his property to the wife of 1st respondent on 15-06-2007 and also executed an agreement of sale in his favour.

5. The 1st respondent filed I.A.No.576 of 2013 under Section 45 of the Evidence Act to send the said agreement of sale to a hand writing expert for comparison of the signature of 2nd respondent/1st defendant thereon with admitted signature of 2nd respondent on another agreement of sale dt.28-08-2006 allegedly executed by 2nd respondent in favour of one M.Chiranjeevi.

6. This application was opposed by the petitioner. He contended that 2nd respondent, who is the signatory to the suit agreement of sale dt.21-10-2006, had not filed any Written Statement disputing the execution of the said document. He further contended that the alleged agreement dt.28-08-2006 filed by 2nd respondent is a document created for the purpose of litigation and so, there is no question of sending the suit agreement to an expert for comparison with the said document.

7. By order dt.09-10-2014, the Court below allowed the said application. It held that earlier I.A.No.1114 of 2011 filed by 1st respondent was dismissed for non-production of admitted signatures of 2nd respondent/1st defendant and since the same was dismissed on a

technical ground, the present application deserves to be allowed and opportunity should be given to 1st respondent to adduce sufficient evidence to prove their respective pleadings.

8. Challenging the same, this Civil Revision Petition is filed.

9. Heard Sri V.Sudhakar Reddy, learned counsel for the petitioner and Sri V.Jagapathi, learned counsel for 1st respondent.

10. Learned counsel for the petitioner contended that the Court below erred in allowing I.A.No.576 of 2013 at the instance of 1st respondent; that 1st respondent in his Written Statement did not claim either that he is in possession of the property or that there was an agreement of sale in his favour; the pleading of 1st respondent was that there was an agreement of sale executed in favour his wife by 2nd respondent-1st defendant; and since 1st respondent has no right, title or interest in the plaint schedule property and since he is not authorized either by his wife or by 2nd respondent to contest the suit, merely because he raised a plea in the Written Statement that the suit agreement of sale dt.21-10-2006 is a forged document, it could not have been sent to an expert.

11. Learned counsel for 1st respondent on the other hand contended that no error was committed by the

Court below in sending the suit agreement of sale to an expert; the Court below had earlier dismissed I.A.No.1114 of 2011 filed by 1st respondent to send the document to an expert only on the ground that comparable signatures of 2nd respondent-1st defendant were not produced; now that an agreement of sale dt.28-08-2006 has come to light to which 2nd respondent as well as one M.Chiranjeevi are parties, the Court below was right in allowing the said I.A. It was further contended that by the time this Revision was filed, the amount directed to be deposited by the Court below for sending to this expert had already been deposited by 1st respondent and that the report of the expert has also come to the Court by now; and therefore this Court should not interfere with the Order passed by the Court below.

12. I have noted the submissions of both parties.

13. The suit O.S.No.83 of 2007 had been filed by the petitioner against both the respondents alleging that 2nd respondent-1st defendant had executed an agreement of sale dt.21-10-2006 in his favour. In the plaint, the only allegation made against 1st respondent is that he is colluding with 2nd respondent and trying to create some sham and nominal document in favour of 1st respondent or others. No allegation is made by the petitioner that 1st respondent is in possession of the plaint schedule

property.

14. The 2nd respondent-1st defendant did not file Written Statement denying the execution of the suit agreement of sale.

15. In the Written Statement filed by 1st respondent-2nd defendant, he also did not plead that he is in possession of the plaint schedule property or that he has some right, title or interest therein. His specific plea was that there is an agreement of sale executed in favour of his wife by 2nd respondent-1st defendant.

16. Thus, from these facts, it is evident that 1st respondent has no right, title interest in the plaint schedule property or in the *lis* as such. He also does not hold any power of attorney from his wife authorizing him to manage her property which she is alleged to have got under an agreement of sale dt.15-06-2007 from 2nd respondent.

17. Merely because 1st respondent has contended that the suit agreement of sale is a forged document, when there is nothing on record to show he has any right, title or interest in the plaint schedule property or in the litigation as such, it is not competent for him to file a petition under Section 45 of the Evidence Act to send the suit agreement of sale to a handwriting expert and secure an opinion as to whether the signature on the suit agreement of sale is that of 2nd respondent or not. Hence,

the very application I.A.No.576 of 2013, in my opinion, is not maintainable at the instance of 1st respondent and it ought not to have been entertained by the Court below.

18. Therefore, the Civil Revision Petition is allowed and the order dt.09-10-2014 in I.A.No.576 of 2013 in O.S.No.83 of 2007 of the Principal Junior Civil Judge, Puttur is set aside. The said Court shall ignore any expert opinion, which it had received on the above point after this Revision Petition is filed pursuant to the said order passed by it, at the time of deciding the suit. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

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