

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.344 OF 2014

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DATED: 25.02.2015

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Between:

T. Shyam and another

.. Petitioners

And

Smt. Perkari Jayasri

.. Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.344 of 2014

ORDER:

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This civil revision petition under Article 227 of the Constitution arises out of the order dated 09.12.2013 passed by the learned V Additional Junior Civil Judge, Warangal, in O.S.No.1186 of 2009.

The petitioners are the defendants in the said suit which was filed for a permanent injunction restraining them from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property. By the order under revision, the trial Court permitted a certified copy of the sale deed bearing document No.3521/1997 dated 29.02.1996 to be marked as Ex.X1. This document was produced by P.W.3 deposing on behalf of the plaintiff and despite the objection taken by the counsel appearing for the petitioners-defendants to the marking of the said document, the trial Court overruled the said objection as unsustainable and marked the document.

Sri R. Srihari Swamy, learned counsel who appeared for the

petitioners-defendants before the trial Court, filed affidavit dated 03.09.2014 before this Court stating that he had raised an objection not only to the marking of the document on the ground that it is secondary evidence, but also that P.W.3 through whom it was marked was not competent to mark in evidence the said document as he had no connection thereto.

Though Sri S. Lakshmi Kanth, learned counsel appearing for the respondent-plaintiff, would contend that no prejudice was caused to the petitioners-defendants by the marking of the document, he is at a loss to explain as to how the trial Court has marked the subject document completely overlooking and ignoring the prescribed procedure for accepting such document in evidence. No petition was filed to mark the said document, which is admittedly secondary evidence, as an exhibit. Further, the objection raised by the defendants as to the competence of P.W.3 to mark the said document in evidence was not even dealt with.

The order dated 09.12.2013 passed by the trial Court is accordingly set aside. It shall be open to the respondent-plaintiff to file an appropriate application for marking of the subject document if so advised, in accordance with law.

The civil revision petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE SANJAY KUMAR

25th February, 2015
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