

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos. 326 and 336 OF 2015

COMMON ORDER:

The Civil Revision Petitions are filed by the petitioners against the orders dated 15.10.2014 passed in I.A No.332 of 2011 and I.A No.331 of 2011 in O.S No.30 of 2010 on the file of the Senior Civil Judge, Kamareddy, Nizamabad District.

2. Heard both sides. Perused the material on record.

3. The brief facts of the case are as under:

(a) The respondents Nos.1 and 2 herein are the son and father, who are no other than grand son and one of the sons of deceased Madasu Balaiah. The said Balaiah is father of petitioners herein (defendants 2 to 4) and respondent No.2 (defendant No.1). The respondent No.1 herein had filed the suit vide O.S No.30 of 2010 on the file of the Senior Civil Judge, at Kamareddy, Nizamabad District basing on the Ex.A1 will deed under dispute including in marking and unregistered, the plaintiff sought declaration that he is the owner pursuant to bequeath made in the said will and for consequential relief against the defendants including for injunction restraining their interference pending suit. Undisputedly, before commencement of trial, the defendants 2 to 4 as petitioners filed I.A No.332 of 2011 to call for the documents available with (i) Andhra Bank, Kamareddy Branch, vide Account No.ABG12561 with his signatures or thumb impressions in opening the account and in operation of the transactions made in the account and (ii) from the office of Employees Provident Fund Organisation (EPF) relating to PPO Account No.11029 bearing the signatures and thumb impressions of the deceased in relation to the EPF he withdrew besides amounts borrowed and I.A No.331 of 2011 for sending of the documents being secured along with the disputed will Ex.A1 for comparison with the signatures and thumb impressions of Ex.A1—will deed in dispute by the defendants in support of their defence by the same is outcome of fabrication.

(b) The respondent/ plaintiff contended that the petitioners herein have filed vague applications before the trial Court without specifying any particular document

is to be called for and thereby to dismiss the petition.

(c) Ultimately, the lower Court dismissed the two applications viz., call for the documents from Andhra Bank and EPF organisation and to send the disputed will for expert's opinion by comparison.

(d) It is impugning the same, the present revisions are maintained.

4. Needless to say from reading of Section 100 read with Section 68 to 71 of Evidence Act and Section 63 of Indian Succession Act, it is for the plaintiff whose claim is based on the will to prove due execution by examination of atleast one of the attestor and otherwise on showing the attestors and scribe are if not alive, to prove the signatures or writing of the scribe and the attestors respectively including under Section 47 read with Section 67 of Evidence Act.

5. Once that is the burden of the plaintiff even subject to that proving, if any, when the defendants disputed the will saying that it is a forged and fabricated document and the signatures or thumb impressions on the will are not that of the so called testator as executant and the documents sought for will establish the same to be proved through expert opinion.

6. Even expert opinion under Section 45 read with Section 51 of the Evidence Act is an opinion evidence and the evidenciary value mainly rests on the reasons for the conclusions of the expert once that is the mode of proof available to the defendants in disputing the will, they can seek. Thus, the trial Court should have considered the same and allowed the two petitions instead of dismissing by observing that they did not state in the affidavits respectively of they made any personal efforts to secure those documents to file for comparison before to seek for calling of the documents.

7. Having regard to the above, the revision petitions are allowed and consequently both the applications are allowed by directing the lower Court to issue

summons to the Andhra Bank and Employees Provident Fund Organisation respectively to call for production of the signatures or writing or thumb impressions of the deceased available in relation to the accounts supra and after receiving the same besides the thumb impressions and signatures on considering also any other documents of contemporary relevancy to Ex.A1—will to sent to the expert for comparison and opinion, with reference to the Court no doubt as per Section 45, 51 and 73 of Evidence Act come to its own conclusion.

8. As the suit is from the submission of both sides after closure of the evidence in the arguments stage i.e., the two applications were filed prior to the commencement of trial and as the documents are necessary to call for sending of the same with the disputed will for expert opinion as detailed supra, the trial Court pursuant to the above observations can take immediate steps, including in directing the petitioners to deposit the witness batta with TA & DA or undertaking to pay directly to the witness concerned and also to deposit for expert fees any reasonable amount to the credit of the suit and the like.

9. Accordingly, both the Revision Petitions are allowed as indicated supra.
No order as to costs.

10. Miscellaneous petitions, pending if any, in these Revisions shall stand closed.

B.SIVA SANKARA RAO,J

Date:20.02.2015

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THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

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