

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL REVISION PETITION No.3331 of 2015

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21.08.2015

Between:

Atmakuri Dhana Lakshmi and others

...Petitioners

And

Atmakuri Pitchaiah

...Respondent

Counsel for the petitioners: Mr.P.V.S.K.Chakravarthy

Counsel for the respondent: --

The Court made the following:

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ORDER:

This civil revision petition arises out of order, dated 21.07.2015, in I.A.No.1299 of 2014 in O.S.No.131 of 2013 on the file of the Principal Senior Civil Judge, Narasaraopet.

I have heard Mr.P.V.S.K.Chakravarthy, learned counsel for the petitioners, and perused the record.

The respondent filed the aforementioned suit for declaration of title in respect of the suit schedule property. The suit is based on the purported Will executed by the mother of the respondent on 18.11.1993. The respondent pleaded in the plaint that the petitioners have stolen the original Will. Accordingly, he filed I.A.No.1299 of 2014 to receive photocopy of the unregistered Will, dated 18.11.1993. The respondent, *inter alia*, pleaded in the affidavit filed in support of the said application that he issued registered notice to the petitioners calling upon them to produce the original Will and that the petitioners, through their counsel, having undertaken before the Court that the original Will will be produced, got reply notice, dated 15.02.2013, issued making false denial of theft.

The Court below, while allowing the aforesaid I.A., observed that as the respondent has laid the foundation of execution of the Will by his mother, his losing possession of the original Will and the alleged custody of the Will by the petitioners in the plaint itself, he has satisfied the requirements of Section 65 of the Indian Evidence Act, 1872 (for short 'the Act').

Though the learned counsel for the petitioners has strenuously argued that except making an allegation that the original Will is in the custody of the petitioners, the respondent has not produced any proof in respect thereof, as rightly observed by the Court below, the respondent has not only pleaded in the plaint that his mother has executed unregistered Will in his favour, but also pleaded that the original Will is in the custody of the petitioners. As before filing I.A.No.1299 of 2014, the respondent has also caused a registered notice on 02.02.2013

served on the petitioners calling upon them to produce the original Will, by giving such notice, the respondent has complied with the requirements of Section 66 of the Act.

In these facts of the case, the Court below has not committed any error in taking the view that the respondent has satisfied the provisions of Section 65 of the Act for producing the photocopy of the Will as secondary evidence.

It needs to be observed that by mere production of photocopy of the Will, no prejudice is caused to the petitioners, for the burden heavily lies on the respondent to prove not only the execution of the Will by his mother, but also the genuineness of the photocopy of the Will sought to be produced by him.

In the above facts and circumstances of the case, I do not find any illegality or jurisdictional error in the order of the Court below allowing I.A.No.1299 of 2014.

The Civil Revision Petition is accordingly dismissed.

As a sequel to dismissal of the Civil Revision Petition, C.R.P.M.P.No.4465 of 2015 filed by the petitioners for interim relief shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

21st August, 2015
GHN