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CIVIL REVISION PETITION No.1189 of 2016

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ORDER:

This revision is filed under Article 227 of the Constitution of India, challenging the order dt.20.08.2015 in I.A.No.383 of 2015 in O.S.No.45 of 2014 on the file of I Additional District Judge, Warangal.

2. The petitioners are defendants 1 and 3 in the above suit.

3. The suit was filed by respondent No.1 for declaration that registered Agreement of Sale-cum-General Power of Attorney bearing Document No.11523 of 2012 dt.31.12.2012 is null and void, to cancel the same and for permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of respondent No.1 over the said property.

4. Respondent No.1 filed I.A.No.383 of 2015 to consider the certified copy of the said document and certified copy of sale deeds executed by petitioner No.1 in favour of petitioner No.2 and respondent No.2 and receive the same as secondary evidence.

5. Respondent No.1 contended that the original of the registered sale deeds and the suit Agreement of Sale-cum-General Power of Attorney are in the custody of the petitioners as well as respondent No.2 and they did not file them along with the written statement.

6. Counter-affidavit was filed by petitioner No.1 denying the title of respondent No.1 with regard to the subject property and mentioning about the suit O.S.No.525 of 2012. The petitioners and respondent No.2 nowhere denied that they have custody of the original Agreement of Sale-cum-General Power of Attorney or the original registered sale deeds.

7. By order dt.20.08.2015, the Court below allowed the said I.A. It held that admittedly the original of these documents are in the custody of the petitioners and respondent No.2 and that they are not in the custody of respondent No.1. It also

recorded the contention of respondent No.1 that notice was given by him to petitioners and respondent No.2 to furnish the said documents, but he did not do so. It rejected the contention of the petitioners that there is no compliance with Section 66 of the Evidence Act, 1872, on the ground that the original Agreement of Sale-cum-General Power of Attorney as well as sale deeds are only in the custody of petitioners and respondent No.2.

8. Although, the learned counsel for the petitioners in this Revision sought to contend that there is no compliance with Section 66 of the Evidence Act, since there is no denial by the petitioners as well as respondent No.2 about the custody of the originals of the Agreement of Sale-cum-General Power of Attorney as well as the registered sale deeds executed by petitioner No.1 in favour of petitioner No.2 and respondent No.2, the petitioners and respondent No.2 cannot take advantage of their own wrong in retaining the originals of those documents and raise a technical plea of non-compliance of Section 66. The Court below in fact says that it was complied with by respondent No.1.

9. In this view of the matter, I am not inclined to interfere with the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

10. Therefore, the Civil Revision Petition is dismissed. No costs.

11. Consequently, the miscellaneous applications pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

19th April, 2016

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