

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4918 of 2015

ORDER:

The 1st defendant in the suit, no other than brother of sole plaintiff and some other defendants including 5th defendant mother among defendants 3 to 6 filed I.A.No.865 of 2015 in O.S.No.46 of 2013 before the lower Court saying the plaintiff and other defendants as co-respondents 1 to 6 under Order 16 Rules 1 to 5 of the Code of Civil Procedure (for short 'C.P.C.') to summon the Sub-Registrar, Kanchikacherla, along with the original record of the gift deed executed by the mother in favour of the plaintiff vide settlement deed No.2434/2008 dated 26.05.2008 to prove the thumb impression and signature of the gift deed is that of executant(mother) 5th defendant in favour of the plaintiff. Plaintiff in her evidence before the trial Court as PW.1 in part of cross examination stated that "it is true I do not ask for partition previously albeit I got right but I sought for partition by filing the suit subsequently. It is not true to say I was gifted Ac.1.00 cents of land under registered gift deed executed by my mother 2nd defendant. I did not go to the Sub-Registrar office and the document shown to me as gift deed was not executed in my favour. It is not true to say I was gifted Ac.1.00 cents of land under the document No.2434/2008 of Sub-Registrar Officer, Kanchikacherla".

In fact, the 5th defendant(mother) as DW.3 deposed before the trial Court about her execution of such gift deed in favour of the plaintiff and in her cross examination by the plaintiff, there is no specific denial of said execution of the gift deed. In the impugned order seeking to summon the Sub-Registrar to produce the original register containing the signature and thumb impression of the mother in proof of execution, from the contest of the plaintiff as Ex.P1. From the recitals of Ex.B3 exhibited by her mother in her favour there is nothing indicating it was gifted only in lieu of her share to non-suit her in the suit for partition. By so referring at para-6 of the order of her said contest at para-7

the lower Court observed that the certified copy of the said registered settlement deed dated 26.05.2008 stands in the name of the plaintiffs executed by 5th defendant(mother) which is Ex.B3 whether it is executed towards her share or not is a matter to be decided in the suit.

2. It is the submission of the learned counsel for the respondents in the revision impugning the dismissal order of the lower Court that when the gift deed itself is admitted by the plaintiff as executed by 5th defendant that is already marked as Ex.B3 through their mother and from her cross examination by plaintiff it is not in dispute but for there is a single sentence in the cross examination of plaintiff by her denying execution of the gift deed and thereby there is nothing to summon the record but for to decide in the suit as to whether gift deed Ex.A3 executed by mother of plaintiff/5th defendant and plaintiff is a beneficiary there from deprives the share claimed by partition in the suit or not. However, once such is the case of the stand of the plaintiff, the plaintiff has to either come back and depose in the further examination or file affidavit but for she denied in the cross examination of her about the execution of the gift deed there is no need that could arisen to summon the Sub-Registrar to produce the original record to prove the signature and thumb impression of the mother in proof of execution. It is needless to say once there is no dispute on the execution even under Section 69 of the Evidence Act, there is no proof of examination of atleast one of the attestors. Here, in the cross examination of their mother-DW.3 from execution of Ex.B3, there is no dispute by the plaintiff to require any further proof but for plaintiff denied in her cross examination about the gift deed in asking to file an affidavit or come back to the witness box and state in her further examination about the gift deed.

3. Accordingly, the Civil Revision Petition is disposed of directing the lower Court to follow the same direction to direct the plaintiff to file affidavit admitting the gift deed explaining what she denied in her cross examination or by recalling the plaintiff by virtue of this order if at all she wants to admit, else to call for the records by summoning the

Sub-Registrar to prove the same. There is no order as to costs.

4. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03-08-2016

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