

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION Nos.1516 & 1887 of 2015
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COMMON ORDER:

The petitioners in O.P.No.391 of 2013 filed these two Civil Revision Petitions, under Article 227 of the Constitution of India, assailing the orders dated 17.11.2014 of the learned I Additional Chief Judge, City Civil Court, Secunderabad passed in I.A.Nos.2358 of 2013 and 2359 of 2013 in O.P.No.391 of 2013.

2. I have heard the submissions of the learned counsel for the revision petitioners and the learned counsel for the respondents 1 and 2. I have perused the material record.

3. The facts, which are to be stated as a prelude, in brief, are as follows:-

One B.Srisailam and B.Somalakshmi are man and wife. They had a son by name B.Somaiah, who predeceased them, and four daughters, i.e., petitioners 2 and 3 and the respondents 3 and 4 herein. The 2nd respondent is their daughter-in-law being the wife of their predeceased son. The 1st respondent is their grand son, being the son of their predeceased son and the 2nd respondent. The first petitioner-N.Gowri Shanker and one K.Rajasekhar are their sons-in-law, they being the husbands of petitioners 3 and 2 respectively. The property involved in the controversy belonged to the said Somalakshmi, wife of the said Srisailam. All these facts are not in dispute. While so, the 1st petitioner and the petitioners 2 and 3, who are the daughters of the said Srisailam and Somalakshmi, brought the aforesaid OP before the Court below for grant of a probate in respect of the Will dated 11.05.1998 said to have been executed by Somalakshmi in respect of her property. They are claiming a 1/5th share each in the property of their mother. The said proceeding for grant of probate is being resisted by the respondents 1 and 2 herein, i.e., the grand son and the daughter-in-law of the said testatrix Somalakshmi *inter alia* contending that she had earlier executed a Will dated

09.05.1994 bequeathing all her properties in favour of her husband Srisailam and that on her death, the property devolved upon her husband and that on that, her husband had executed a registered Will deed dated 07.04.1999 in the first instance bequeathing the property equally to his four daughters, grand son and daughter-in-law, i.e., by giving 1/6th share each to each of them in the property and that later, he had cancelled the said registered Will by executing a registered cancellation deed dated 02.08.2006 and that he had also executed on the same day, a Will dated 02.08.2006 bequeathing the immovable property in favour of the respondents 1 to 4, i.e., the grand son, daughter-in-law and the other two daughters M.Meghamala and B.Anuradha, the respondents 3 and 4, and also by bequeathing certain sums of money, viz. Rs.10,00,000/- to the 2nd petitioner and Rs.7,65,000/- to the third petitioner. Thus, there are in all, 4 Wills before the Court below and the Court below has to now adjudicate the *lis* on merits and come to a just and fair conclusion as to which one of the Wills is true and genuine and has to examine as to whether the probate as prayed for is to be granted in favour of the petitioners 2 and 3 in respect of the Will dated 11.05.1998 said to have been executed by late Somalakshmi, wife of late Srisailam.

4. In this backdrop, the petitioners 2 and 3, who had sought a probate of the said Will, filed two applications before the Court below, viz., one for a direction to the grand son and the daughter-in-law of late Somalakshmi, i.e., the respondents 1 and 2 to deposit the amounts already collected by them from the tenants, who are respondents 5 to 8 and another petition for a direction to the tenants to deposit 1/5th share out of rents each payable by them to the credit of the OP before the Court below in view of their claim for 1/5th share each in the property said to have been bequeathed under the Will in question. The said two applications were resisted by the respondents 1 and 2 *inter alia* raising a contest based on the Will they are relying upon and said to have been executed by late Srisailam and also the registered cancellation deed which are already stated *supra*. It is pertinent to note that the respondents 1 and 2 have also filed a petition before the Court below for rejection of the OP on the ground of maintainability, but, the said application

filed by the respondents 1 and 2 was dismissed. Be that as it may. The Court below, having considered the pleadings and the submissions made before it, dismissed both the applications, as complex questions as regards the genuineness of various Wills set up by the parties have to be gone into after a full-fledged trial in the OP and that till then, no orders as being sought for by the petitioners shall be passed.

5. The case of the petitioners, as sought to be submitted by the learned counsel for the petitioners is this: "So far the respondents 1 and 2 have collected huge sums of money viz., Rs.6,80,400/- from the tenants including the shares of the petitioners 2 and 3 and that the tenants, inspite of requests made orally and in writing, are not paying the share of rents to the petitioners 2 and 3 on account of the threats being given by the first respondent, and that the respondents 1 and 2 are collecting the rents from the tenants and that even assuming for a moment, without prejudice to the contentions, that the Will dated 07.04.1999 which was executed by late Srisailam is true, they are entitled to $\frac{1}{6}$ th share in the properties if not a $\frac{1}{5}$ th share each and that further even assuming for a moment without prejudice to their contentions that the subsequent Will dated 02.08.2006 executed by late Srisailam is true, yet they are entitled to Rs.10,00,000/- and Rs.7,65,000/-, i.e., in all Rs.17,65,000/- and that as per the terms of the said Will, the payment of the said amount to the petitioners 2 and 3 by the respondents 3 and 4 together with respondents 1 and 2 is a condition precedent and that until the said amount is paid, the respondents 1 and 2 cannot enjoy the benefits of the said Will and that therefore, it is in the interest of justice to direct the deposit of amounts to the credit of the OP pending before the Court below as sought for by the petitioners, but the Court below had erroneously dismissed the said petitions and that in case such a direction to deposit the already collected rents and future rents to the credit of the OP is granted as sought for in the two applications, the petitioners are prepared not to withdraw the same till the final disposal of the OP and that the observation of the Court below while dismissing the petitions that the petitioners can claim *mesne* profits is unsustainable. He had therefore, prayed for allowing the revision petitions.

6. On the other hand, the learned counsel for the respondents 1 and 2 would submit that the first petitioner is an advocate and that along with his co-brother Rajasekhar, he is also an executor to the Will in question and that he was responsible for execution of the Will dated 07.04.1999 which is executed and registered by the late Srisailam and that he is aware of the truth and genuineness of the Wills and that in the registered Will dated 07.04.1999, there is a mention of the earlier Will dated 09.05.1994 and that on 02.08.2006, late Srisailam, having cancelled the Will dated 07.04.1999 by a registered cancellation deed dated 02.08.2006, had further executed the final and the last Will on the same day, i.e., on 02.08.2006 and that in view of the said admitted facts, which cannot be denied by the first petitioner, who is one of the executors and an advocate, the Court below was right in dismissing the applications. He would further submit that in the circumstances of the matter, some of the tenants are not paying the rents, and that, therefore, O.S.No.278 of 2014 was filed against the 5th respondent tenant on the file of the learned III Senior Civil Judge, City Civil Court, Secunderabad and that the said suit was decreed and eviction was ordered and that the rent payable by the said respondent is Rs.15,000/-per month. He would further submit that a suit in O.S.No.34 of 2014 was also filed before the same Court against the 7th respondent-tenant and that the rent payable by the said tenant is Rs.29,500/- per month and that the said suit is pending. According to his further submissions, the rent payable by the 6th respondent is Rs.15,000/- per month and the rent payable by the 8th respondent-tenant is Rs.5,700/- per month and that the said 8th respondent tenant alone is paying the rents. He would further submit that when the respondents 1 and 2 and the respondents 3 and 4 had offered to pay Rs.17,65,000/- by way of a notice, as was mentioned in the counter, the same was not accepted by the petitioners 2 and 3 and that even now, the respondents 1 and 2 are prepared to pay, along with the respondents 3 and 4, the said amount provided the petitioners 2 and 3 withdraw the original petition filed for grant of probate.

7. I have given earnest consideration to the facts and submissions. I have

carefully perused the additional material papers and also fleetingly gone through the contents of all the Wills filed by the respondents 1 and 2.

8. As already noted, the petitioners are claiming a probate in respect of the Will dated 11.05.1998 executed by late Somalakshmi, wife of late Srisailam. While disputing the genuineness of the said Will, the respondents 2 and 3 plead that said late Somalakshmi had already executed a Will dated 09.05.1994 in favour of her husband bequeathing all her properties and that therefore, the question of her bequeathing again the self same properties under a Will dated 11.05.1998 does not arise for consideration and that said late Srisailam, having executed a Will dated 07.04.1999 had cancelled the same by a registered cancellation deed dated 02.08.2006 and that he had further executed a Will on the same day, i.e., on 02.08.2006. In this complex factual milieu, the trial Court has to decide, after full-fledged trial, which one among the four Wills is genuine and final and also the entitlement or otherwise of the petitioners to the probate as prayed for in respect of the Will they are relying upon. As rightly held by the Court below, complex questions of fact are involved in this *lis* and that the said complex questions of fact require the Court to decide the genuineness or otherwise of the four Wills set up by the parties. It is trite to hold that it is not just and fair at this stage of the matter to direct either the respondents 1 and 2 to deposit into the Court the amounts which are allegedly collected by them in a sum of Rs.6,80,400/- or the tenants-respondents 5 to 9 to deposit two 1/5th shares out of the monthly rents respectively payable by them towards the shares of the petitioners 2 and 3 each into the Court, i.e., to the credit of the OP pending before the Court below. Unless the controversial issues are resolved finally, no direction, in the well considered view of this Court, need be granted, as rightly held by the Court below, in view of the complexity of the facts and the rival claims based on Wills involved in the *lis*. Further, in a proceeding for grant of a probate in respect of a Will in dispute, no substantive reliefs as prayed for need be granted by passing interlocutory orders, as such a course is inappropriate in the facts and circumstances of the matter.

9. Having regard to the reasons, this Court is of the well considered view that the orders of the Court below, which are assailed in both these revision petitions, brook no interference.

10. In the result, both the Civil Revision Petitions are dismissed. Since the OP is of the year 2013, it is apposite to observe that the Court below shall make an endeavour to dispose of the said OP on merits and in accordance with the procedure established by law, as expeditiously as possible and preferably within two (02) months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in both these Civil Revision Petitions shall stand closed.

M.Seetharama Murti, J

22nd February, 2016
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