

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

-
C.R.P.No.453 of 2016

ORDER:

Heard Sri K.Chidambaram, learned counsel for the petitioners, and Sri K.V.Subrahmanya Narusu, learned counsel for the respondent.

This Revision, under Article 227 of the Constitution of India, is preferred against the order passed by the learned IV Additional District Judge, Visakhapatnam in I.A.No.1238 of 2015 in O.S.No.230 of 2006 dated 05.12.2015.

The petitioners herein are the defendants in the Suit filed by the respondent-plaintiff seeking partition of the suit schedule property. I.A.No.1238 of 2015 was filed under Order XIII Rule 6 and Sections 94(e) and 151 of C.P.C. by the respondent herein to reject the documents i.e photostat copy of the will dated 25.01.1957, and manual copy of the will dated 25.10.1975, on the ground that they are inadmissible in law.

In the order under revision, the Court below noted that both the wills were certified copies; one was a photostat copy and the other a manual copy; and this amounted to secondary evidence of the original will. On the ground that the revision petitioners herein had failed to satisfy it that the documents constituted secondary evidence and fell within any of clauses (a) to (g) of Section 65 of the Indian Evidence Act, the Court below upheld the contention of the respondent-plaintiff regarding inadmissibility of the wills.

Before this Court, Sri K.Chidambaram, learned counsel for the petitioners, would refer to the affidavit filed in support of the application filled by the respondent-plaintiff wherein it was stated as under:

"As such the certified manual copied will is only a secondary evidence and it is not admissible under law, and cannot be marked as an exhibit without producing the original will."

According to the learned counsel, once the document is accepted to be secondary evidence, it is always open to the petitioner to contend that such a document be marked in evidence. Under Section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document in the cases mentioned in clauses (a) to (g) thereunder. As has been rightly noted by the Court

below, none of the ingredients were shown to have been satisfied by the petitioners herein.

Sri K.Chidambaram, learned counsel for the petitioners, would, however, contend that such an opportunity was not provided to the petitioners; and it is only if such an opportunity was provided, could the petitioners have satisfy the Court below that the ingredients of any one of clauses (a) to (g) of Section 65 of the Indian Evidence Act was satisfied.

It would be wholly inappropriate for this Court, in the exercise of its jurisdiction under Article 227 of the Constitution of India, to take upon itself the task of examining whether the ingredients of clauses (a) to (g) of Section 65 of the Indian Evidence Act are satisfied, for the said documents to be received as secondary evidence.

Sri K.Chidambaram, learned counsel for the petitioners, would seek liberty to file an application afresh before the Court below to have these documents marked as secondary evidence after satisfying the Court below that their case falls within any one of clauses (a) to (g) of Section 65 of the Indian Evidence Act. Suffice it to make to clear that this order shall not preclude the petitioners from making such an application, and for the Court below to consider the same in accordance with law.

The C.R.P. is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

22nd April 2016.
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Date: 22.04.2016

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