

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.188 of 2015

ORDER:

This Civil Revision petition under Article 227 of the Constitution of India by the unsuccessful defendant is directed against the intermediary orders, dated 18.11.2014, of the learned Special Judge for trial of Cases under SCs & STs (POA) Act-cum-X Additional District & Sessions Judge, East Godavari, Rajahmundry, passed in O.S.No.140 of 2011.

2. I have heard the submissions of the learned counsel for the revision petitioner/ defendant and the learned counsel for the respondents/ plaintiffs. I have perused the material record. The parties shall hereinafter be referred to as 'the plaintiffs' and 'the defendants' for convenience and clarity.

3. The introductory facts are as follows:

The plaintiffs 1 and 2 herein brought the suit against the defendant for declaration of their respective titles in respect of various specific items in the plaint schedule property and for consequential permanent injunction. The plaintiffs also claimed certain sum with interest towards damages. The defendant having filed a written statement is resisting the suit. During the course of trial, the defendant tendered for marking Photostat copies of certain documents, some of which were filed earlier before the Land Reforms Tribunal by late Padala Satyanarayana Reddy, the father of the 1st plaintiff. When the Photostat copy of the affidavit filed by the said late Padala Satyanarayana Reddy in LCC 1156/ 75/ RMM on the file of the Land Reforms Tribunal, Rajahmundry, was sought to be tendered in evidence on behalf of the defendant, an objection was raised by the plaintiffs for admitting it in evidence. The said affidavit was said to have been obtained by the defendant from the Tribunal by following the provisions of the Right to Information Act. On behalf of the defendant, his learned counsel contended before the trial

Court that the Photostat copy of the document that is sought to be filed is the affidavit of Padala Satyanarayana Reddy, the deceased father of the 1st plaintiff and that since the said person who gave the said affidavit before the Land Reforms Tribunal had expired, his affidavit can be received in evidence in the instant suit in view of the provision of Section 33 of the Indian Evidence Act. However, the learned counsel for the plaintiffs having placed reliance on certain decisions contended that the said affidavit of late Padala Satyanarayana Reddy cannot be admitted in evidence as the requirements of the provision of Section 33 of the Indian Evidence Act are not fulfilled. In fact, when this document and the other documents were filed along with a petition under Order VIII Rule 1 (A) read with Section 151 of the Code for receiving the same on file after granting necessary leave, the trial Court allowed the said petition and received the documents filed by the defendant, subject to proof and relevancy. However, when the affidavit of the declarant, late Padala Satyanarayana Reddy, was sought to be marked, the trial Court did not permit it to be marked by erroneously observing that it pertains to a proceeding before the Land Acquisition Officer and it cannot be used in a judicial proceeding in view of the provision of Section 33 of the Indian Evidence Act.

4. It is not in dispute before this Court that the defendant emphatically denied in his written statement the alleged family partition between Padala Satyanarayana Reddy and his three sons. To substantiate the said defence, the defendant now seeks to file the affidavit of late Padala Satyanarayana Reddy filed before the Land Reforms Tribunal, Rajahmundry in LCC 1156/ 75/ RMM. The said late Padala Satyanarayana Reddy filed the affidavit in the said proceedings before the Land Reforms Tribunal in his capacity as a declarant. Therefore, in the well considered view of this Court, there is no need to place strict reliance on the provision of Section 33 of the Indian Evidence Act, which deals with relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated. The said affidavit being a pleading of the

declarant in support of his claim before the Land Reforms Tribunal, it can be permitted to be tendered in evidence, if the other requirements regarding the admissibility and relevancy are satisfied. The said affidavit copy was said to have been obtained by the defendant from the Tribunal by following the provisions of the Right to Information Act. The law is well settled that pleading in a previous proceeding, be it before a judicial authority or quasi judicial authority is a public document and a copy of it can be permitted to be marked. Viewed thus, this Court finds that the order impugned brooks interference.

5. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. The trial Court shall now permit the 1st defendant to tender in evidence the photostat copy of the affidavit of late Padala Satyanarayana Reddy filed in LCC 1156/1975/RMM on the file of the Land Reforms Tribunal, Rajahmundry, provided the other requirements for its admission in evidence are satisfied.

No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M .SEETHARAMA MURTI, J

02nd September, 2016
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