

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.2704 of 2016

ORDER:

This Civil Revision Petition, filed under Article 227 of the Constitution of India, by the plaintiff in O.S.No.19 of 2013, assails the docket order, dated 20-04-2016 passed by the Court of III Additional District Judge, Ananthapuram District in I.A.No.334 of 2016 in O.S.No.19 of 2013.

Heard Sri N. Chandra Sekhar Reddy, learned counsel for the petitioner/plaintiff. Despite service of notice none appears for the respondents.

The plaintiff/petitioner herein instituted O.S.No.19 of 2013 for partition and separate possession. When the matter was coming up for cross-examination of DW1, the petitioner herein filed the instant I.A.No.334 of 2016 under the provisions of Order 13 Rule 10(1) of Code of Civil Procedure, praying to send for a will, dated 31-08-1996 from this Court, marked as Ex.A2 in O.S.No.140 of 1990.

The learned III Additional District Judge, by way of a docket order, dated 20-04-2016 closed the said application while keeping it open to the petitioner to file a certified copy of the will. The said order is under challenge in the present Civil Revision Petition.

According to the learned counsel for the petitioner, the order of the Court below is erroneous and not in terms of Order 13 Rule 10(1) of Code of Civil Procedure. It is further submitted by learned counsel that the learned Judge did not record any valid reasons for closing the application.

In the affidavit filed in support of the application, it is stated that the respondents 1 to 3 are not evincing any interest to produce the registered will for the purpose of proving genuineness though the document is very much necessary. It is also stated that it is very difficult to compare the signature of the executants of the document and to cross-examine. It is further stated that without the original document there cannot be full-fledged cross-examination.

A perusal of the order under challenge shows that except stating that the petitioner is at liberty to file certified copy of the will, the learned Judge did not assign any other valid reason for closing the application. The learned Judge ought to have adverted to the contents of the supporting affidavit.

After considering the contents of the affidavit filed in support of the application and in terms of the provisions of Order 13 Rule 10(1) of the Code of Civil Procedure, this Court

is of the considered opinion that the matter requires reconsideration by the Court below.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order, dated 20-04-2016 passed by the Court of III Addl. District Judge, Ananthapur in I.A.No.334 of 2016 in O.S.No.19 of 2013. Consequently, I.A.No.334 of 2016 stands restored to file and the learned III Addl. District Judge, Ananthapuram is directed to pass orders afresh after hearing all the stakeholders. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

September 09, 2016

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