

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.3153 of 2016

ORDER:

This Revision is filed challenging the order dt.08-06-2016 in I.A.No.886 of 2016 in O.S.No.122 of 1981 of the Principal Senior Civil Judge, Eluru.

2. Petitioners are defendants in the suit. The said suit was filed for declaration of title, recovery of possession and consequential injunction in respect of suit schedule properties by respondent Nos.1 to 3.

3. The suit was decreed on 30-10-1995 by the Subordinate Judge, Eluru. This judgment and decree was questioned in A.S.No.1924 of 1995 before this Court.

4. By order dt.24-11-2015, this Court thought it fit to call for a finding from the trial Court on the following issue afresh within four months from the date of receipt of its judgment: "Whether registered Will dt.01-03-1984 allegedly executed by the 1st plaintiff in favour of plaintiff Nos.2 and 3 is true, valid and genuine?"

5. After remand, respondent Nos.1 to 3 adduced evidence on the issue and the matter was posted for the evidence of petitioner.

6. At that stage, I.A.No.886 of 2016 was filed by

petitioners to receive certified copies of A.P.Gazette No.11 dt.12-03-1970, A.P. Gazette No.43 dt.29-10-1970 and photo copies of patta pass books for patta Nos.2967, 2999 and 3010, all dt.04-01-2011 in the suit.

7. In the affidavit filed in support of this application, it is stated that P.W.4 had given a deposition after remand that respondent Nos.1 to 3 are in possession of the suit schedule property, that this is an incorrect statement and that the petitioners were in possession of the property, which was Bhoodan land allotted to petitioners or their predecessors in title. It was stated that to prove the lawful possession of petitioners, these documents are necessary.

8. Counter-affidavit was filed opposing this application by respondent Nos.2 and 3. They contended that the documents now sought to be filed by petitioners are not helpful to decide the remanded issue involved in the suit, and since this Court in its order of remand had sought a finding only on the issue with regard to Ex.A-32 Will dt.01-03-1984, no other issue or issues can be allowed to be reopened by petitioners. Certain other contentions about validity of the documents produced by petitioners were also raised.

9. By order dt.08-06-2016, the Court below dismissed the said application observing that the High Court had directed it to decide the validity of the disputed Will and

therefore evidence only with regard to the said issue can be permitted. It held that in the application filed by petitioners/defendants they wish to file documents in support of their plea with regard to their possession which is outside the scope of the direction given by the High Court. It therefore held that no case is made out by petitioners for receiving these documents.

10. Assailing the same, this Revision is filed.

11. Sri M.R.K.Chakravarthy, learned counsel for petitioners contended that these documents are necessary to show that the testator who executed the Will had no authority to execute it in respect of the properties mentioned in the Will and this Court therefore should set aside the order passed by the Court below and permit the petitioners to file the above documents.

12. The purpose of filing these documents indicated in the affidavit filed in support of I.A.No.886 of 2016 was clearly to establish the possession of petitioners and also to show that the plaint schedule property is Bhoodan land. But the title of the testator to the plaint schedule property was not a point which the Court below was directed to go into and the only question which was referred to the trial Court for finding by this Court was with regard to the truth, validity and genuineness of the registered Will dt.01-03-1984

allegedly executed by 1st plaintiff in favour of plaintiff Nos.2 and 3.

13. Therefore I am of the opinion that the petitioners were rightly not allowed by the Court below to mark the documents mentioned by them in the affidavit filed in support of I.A.No.886 of 2016.

14. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

15. The Civil Revision Petition is accordingly dismissed.
No costs.

16. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-07-2016
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