

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.4680 OF 2016

ORDER:

The present revision petition is preferred by the 1st plaintiff alone arraying the other five plaintiffs as respondent Nos.7 to 11, whom the petitioner treats as not necessary parties for adjudication of the point involved herein.

The petitioner – 1st plaintiff is aggrieved over the order dated 06.09.2016 in I.A.No.2161 of 2015 in O.S.No.67 of 2013 on the file of the Principal District Judge at Nizamabad. The said I.A was filed under Order VIII Rule 1 (A) (3) read with Section 151 C.P.C by defendant Nos.1 to 6, who are respondent Nos.1 to 6 herein, requesting the trial Court to receive the Will dated 21.01.1995 said to have been executed in favour of defendant No.4 by his mother Krupamma. The other documents, the description of which is mentioned in the petition under the caption “Description of Documents”, were also sought to be received. The Court below, after initial examination of the relevant documents and after hearing the submissions made by both sides, intended to receive the documents and, accordingly, by the order under challenge allowed the petition making an observation that the authenticity of the documents can be decided only after the trial and the documents can be received subject to proof, relevancy and admissibility. The order under challenge

relates to strong resistance offered by the plaintiffs for receiving the said Will.

Heard Sri Praveen Kumar Dubey, learned counsel for the revision petitioner, and Sri Yellabandi Rama Tirtha, learned counsel for respondent Nos.1 to 3. Service was not completed on respondent Nos.4 to 6.

Learned counsel for the revision petitioner would submit that respondent Nos.4 to 6, who are defendant Nos.4 to 6 in the suit, have not participated having got themselves set *ex parte*, and, therefore, non-service of notices on them in the revision petition is of no consequence. Learned counsel would further contend that the Will is a fabricated document and it was not presented in earlier proceedings in O.S.No.127 of 2010 filed before the Principal Junior Civil Judge, Nizamabad, where, the plaintiffs and defendant No.4 in the present suit sought a declaration that they are the legal heirs of late C.S.Krupamma and the suit was decreed on 26.03.2013 declaring them as the legal heirs of late C.S.Krupamma.

A perusal of the judgment dated 26.03.2013, passed in the said O.S.No.127 of 2010, which is placed in the material papers, would show a reference to the Will dated 21.01.1995 executed by late C.S.Krupamma, whose death had taken place on 27.05.1999, and the same was referred to in paragraph '3' and discussed elaborately in paragraphs 5 and 6. Therefore, at this stage, certainly, the said submission of the learned counsel for the revision petitioner cannot be

accepted. Had there was no reference to the said Will at all in the earlier proceedings, there would have been substance in the submission made by the learned counsel for the revision petitioner. Be that as it may, it has to be tested on the touchstone of ‘suspicious features’ by defendant No.4 and, in case he does not intend to participate in the proceedings at all, entire burden is cast on defendant Nos. 1 to 3, who are respondent Nos. 1 to 3 herein and who claim that they have purchased the suit schedule property and acquired rights over the same, to defend their title without any encumbrance, in which direction the ‘Will’ also comes into vogue for examination. The order under challenge allowing the application, to receive the documents, by observing that the authenticity of the documents can be decided only after the trial, cannot at all be faulted and, therefore, does not warrant interference.

Hence, the revision petition is dismissed. The Court below is directed to dispose of the suit in accordance with law uninfluenced by any of the observations made hereinabove.

As a sequel, miscellaneous applications, if any pending in the instant revision, stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

25th November, 2016

v v