

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4513 of 2014

ORDER:

The Civil Revision Petition is filed impugning the order passed on 11.11.2014 in I.A. No.22 of 2014 in O.S. No.51 of 2011 by the learned II Additional District Judge (FTC), Mahabubnagar.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondents. Perused the material on record.

3) The petitioner is the plaintiff and respondents 1 to 4 are the defendants in O.S. No.51 of 2011. The plaintiff and defendants 1 to 4 are brothers and sons of late Abdul Raheem Bin Sayeed. The suit is filed for partition of the plaintiff schedule property. Pending the suit under trial, the 1st defendant herein filed I.A. No.22 of 2014 under Order VIII Rule 1-A read with Section 151 C.P.C to receive the documents viz., C.C of registered sale deed dated 24.02.1993, C.C of pahani patrikas for the year 2008-09, 2010-11 and land revenue receipts. The said application was filed on 03.02.2014 with affidavit averments that, the 1st document, which is certified copy of sale deed, the original of which is lying in mortgage by deposit of title deed with Hyderabad Branch of State Bank of Hyderabad and he obtained the copy recently, thereby, he could not file with the written statement and as the other documents are public documents, he is advised to file the documents in support of his case.

4) The counter filed by the plaintiff in opposing the documents received petition saying, the suit is of the year 2011 and

the claim of plaintiff is for 2/9th share in the plaint schedule property and the 1st defendant/ petitioner filed written statement in I.A. No.22 of 2014 admitting the relationship and did not refer in his written statement regarding the registered sale deed bearing No.665 of 1993 dated 24.02.1993 and now belatedly came with the application in I.A. No.22 of 2014 at the fag end of the suit trial and thereby the petition is liable be dismissed.

5) It is necessary to mention including from the counter that in I.A. No.22 of 2014, there was an order allowing the same on 28.02.2014, against which the plaintiff maintained C.R.P. No.2032 of 2014 and the same was allowed on 01.08.2014 by setting aside the impugned order dated 28.02.2014 (in saying the order no way contains reasons to sustain).

6) As per the plaintiff—revision petitioner, the 1st defendant cannot claim ownership over the property through the registered sale deed, sought to rely, which has no legal sanctity but for created, which was not even made a mention in the notice before filing the suit about the version of the 1st defendant to obtain passbook and title deeds claiming for any extent out of the plaint schedule. It is also the contention of the plaintiff that their deceased father executed will dated 01.07.2007 bequeathing all his properties among his sons and daughter under Shariath Law to take effect after his life time for total extent of Ac.91.39 gts of Kosgi Village, Mahabubnagar District, which is a patta land in his favour issued by the Government of Andhra Pradesh vide Memo No.4914-02/65-8, dated 19.05.1966. It is therefrom sought for dismissal of the petition to receive the documents.

6) The lower Court from the contest, allowed the application covered by the impugned order saying the registered sale deed in question bearing No.665 of 1993 dated 24.02.1993 claiming as bogus or created is a matter of disputes which requires to be decided after its exhibiting during trial and from the reasons assigned in the petition in I.A. No.22 of 2014, for delay in filing the documents, the petition on payment of costs of Rs.100/- can be allowed to receive the documents.

7) The grounds of revision of the plaintiff impugning against allowing said application by lower Court are that there is no whisper about the sale deed, execution and existence in the written statement of 1st defendant and receiving of the documents without explaining reasons for belated filing cannot be sustained, there must be a pleading to receive the documents and to exhibit the documents and the revision is to be allowed setting aside the dismissal order.

8) Learned counsel for the revision petitioner in the course of hearing vehemently reiterated the same and sought for allowing the revision. Whereas it is the contention of the learned counsel for the 1st defendant that the order of the lower Court holds good and for this Court while sitting in revision, within the limited scope, there is nothing to interfere.

9) Heard and perused the material on record.

10) Even according to the plaintiff from the plaint averments, there was an effort made by 1st defendant to claim pass book and title deed behind their back under the guise of the

alleged document. Once such is the case, when 1st defendant wants to exhibit the sale deed dated 24.02.1993, once it is the registered sale deed of 1993 in existence, but for to decide truth of the contents, if at all from any dispute as to a created one left open to decide during trial, there is nothing to dismiss the application to receive, when for delay in its filing is explained. The pahanies and tax receipts are the public documents to receive and whether those are related to the suit property or not is also left open while exhibiting to raise objection decide the objection ultimately.

10) The law is fairly settled from the expression of the Apex Court in ***Bipin Shantilal Panchal vs State of Gujarat***¹, that whenever an objection is raised during evidence taking stage regarding admissibility and relevancy of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (on record), subject to such objections to be decided at the last stage of final judgment.

11) Having regard to the above, there is nothing to sit in revision against the impugned order but for to observe that the documents received is without prejudice to such contest on the contents of the documents in dispute to decide during trial, after the documents that to be exhibited are subject to such objections of the plaintiff, if any, for the 1st defendant to prove.

12) Accordingly and in the result, the revision is disposed of. No order as to costs.

¹ AIR 2001 SC 1158

13) Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:12.09.2016
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