

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5332 of 2010

ORDER:

Assailing the order dated 26.10.2010 passed in I.A.No.736 of 2010 in O.S.No.77 of 2005 on the file of the Principal Junior Civil Judge, Ramachandrapuram, the petitioner/plaintiff filed the present Civil Revision Petition.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in the suit.

The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.77 of 2005 seeking permanent injunction restraining the defendants, their men, agents and assignees from interfering with her peaceful possession and enjoyment of the plaint schedule land. Initially the plaintiff filed a suit against defendant Nos.1 and 2. When defendant Nos.1 and 2 filed written statement stating that they are not in possession of the property and the property is in possession of defendant No.3 and 4, the plaintiff filed I.A.No.1296 of 2005 to implead defendant Nos.3 and 4 as parties to the suit. The trial Court rejected the said I.A. Challenging the same, the plaintiff preferred C.R.P.No.737 of 2006 before this Court which was allowed and defendant Nos.3 and 4 were impleaded. Defendant No.3 filed written statement on 18.10.2006 in

which he has categorically stated that Ch.Ramudu @ Ramalaxmamma executed the Will dated 02.03.1994 and as per the Will, the plaintiff was to enjoy the usufruct from Sy.Nos. 96/4, 98/1 and 98/7 of Hasanabada and in case this defendant marries Annapurna, daughter of Chigurupati Veera Venkata Satyanarayana, this defendant should enjoy the said extent of Ac.2.98 with absolute rights and in case the defendant fails to marry Annapurna, the plaintiff should enjoy the property with absolute rights. After closing the plaintiff's evidence and after examining defendant No.1 as DW.1, defendant No.3 was examined as DW.2 in the said suit. After his cross examination, defendant No.3 filed I.A.No.736 of 2010 to accord permission to file original Will dated 02.03.1993, through the witnesses by name Ch.Venkat Rao.

A counter came to be filed by the plaintiff disputing the averments made in the affidavit filed in support of the petition. It is stated that the petition does not reveal any reasonable cause as to why the said document was not filed along with the written statement and why the said document is in the custody of Ch.Venkata Rao. As such prays for the dismissal of the petition.

After considering the rival submissions, the trial Judge allowed the said I.A. Challenging the said order the plaintiff preferred the present Civil Revision petition.

Learned counsel for the petitioner/plaintiff mainly

submits that no reasons are forthcoming as to why the Will was kept before Ch.Venkata Rao and also relationship between the defendants and Ch.Venkata Rao. It is further urged that there is no material or record to show the relationship between the defendants and Ch.Venkata Rao and since the said Venkata Rao is neither a scribe nor the attester of the Will, the same shall be directed to be placed on record. He further submits that no explanation is forthcoming as to why the said Will was not filed along with the written statement.

Learned counsel for the defendants opposed the application and submits that there is no illegality in the order passed by the trial Court warranting interference.

A perusal of the entire material including the written statement filed by the defendants would show that the suit was filed by the plaintiff for permanent injunction against the defendants. In para Nos.10 and 11 of the written statement, it has been clearly mentioned that one Chigurupati Ramudu @ Ramalaxmamma executed the Will dated 02.03.1994 while she was in a sound and disposing state of mind bequeathing her assets and as per the terms of the said Will, the plaintiff was to enjoy the usufruct from S.No.96/4, 98/1 and 98/7, Hasanbada and in case the defendant marry Annapurna – daughter of Chigurupati Veera Venkata Satyanarayana, this defendant should enjoy the said extent of Acs.2.98 with

absolute rights and in case this defendant fails to marry Annapoorna the plaintiff should enjoy the property of Acs.2.98 cents with absolute rights. Thus on the demise of Smt. Ramudu @ Ramalaxmamma, the plaintiff and other legatees took possession of the lands covered by the bequests in pursuance of the said Will dated 02.03.1994.

Though the learned counsel submits that the written statement is silent as to the person in whose custody the said Will is, but from the reading of the counter, it is clear that the third defendant has deposed in his cross examination that D1 told him ten days prior that the document is in the custody of Ch.Venkata Rao. Therefore, it is clear that for the first time defendant No.3, during his cross examination which took place in the month of August, 2010, disclosed about the name of the person in whose custody the document is. Since he came to know about the same recently through defendant No.1, it will be impossible for him to incorporate the same in the written statement. But one thing which has to be noted is that the existence of Will was mentioned in the written statement and as such the plaintiff was aware about the Will and the contents thereon and it would be sufficient for him to defend the case. Admittedly, the present application is filed by the third defendant to receive the Will dated 02.03.1994 and

the purpose being very limited, the request cannot be rejected.

Though learned counsel for the respondents relied upon the judgment of this Court in ***Voruganti Narayana Rao Vs. bodla Rammurthy and others***^[1] to show that the documents which are filed at belated stage cannot be accepted, but the said judgment may not apply to the case on hand for the reason that there is a reference to the execution of Will by Smt. Ramudu @ Ramalaxmamma, dated 02.03.1994 in its sound state of mind bequeathing her assets. No prejudice is caused to the parties, if the said Will is brought on record. Truth or genuinenity otherwise of the said Will will have to be examined by the trial Court, at the appropriate stage.

Hence, I see no ground to interfere with the order passed in I.A.No.736 of 2010 in O.S.No.77 of 2015 on the file of Principal Junior Civil Judge, Ramachandrapuram.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

25.02.2016
gkv/vhb

[\[1\]](#) 2011 (6)ALD 142