

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4174 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful defendants 2 to 5 is directed against the orders dated 28.08.2015 of the learned Junior Civil Judge, Pithapuram passed in I.A.no.401 of 2015 in O.S.no.113 of 2007 filed under Section 45 of the Indian Evidence Act requesting the trial Court to send exhibit B2 along with other documents containing the signatures of the husband of the plaintiff to a hand writing expert to prove that exhibit B2 was issued by the same person.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants ('the revision petitioners', for brevity) and the learned counsel for the respondent/plaintiff ('the respondent', for brevity). I have perused the material record.

3. At the hearing, the learned counsel for the revision petitioners would submit as follows: "The respondent had brought the suit against the revision petitioners alleging that they are the tenants under her, though in deed, the petitioners had purchased the plaint schedule property. The husband of the respondent received sale consideration and had issued exhibit B2-receipt in favour of the 2nd defendant/2nd revision petitioner; the said receipt, which was issued by the husband of the plaintiff was drafted and scribed by the Son of the plaintiff; when they were summoned as witnesses and were confronted with the said receipt-exhibit B2, they had wantonly and intentionally denied the signatures on the said document and its execution. But, both the witnesses had agreed that the signatures on the exhibit B1-registered sale deed, executed by the plaintiff in favour of the 2nd defendant, are their signatures. In the circumstances, exhibit B2, which is an important document and main piece of evidence, has to be proved by sending it along with exhibit B1-sale deed to a handwriting expert for comparison of the disputed

signatures and writings on it with the admitted signatures and writings on exhibit B1, the registered sale deed. Therefore, the revision petitioners had filed I.A.no.401 of 2015. The trial court having entertained the petition, adjourned the matter to 28.08.2015 by directing the petitioners herein to take certain steps; and for not taking such steps, the petition was closed on 28.08.2015 without passing any orders either allowing or dismissing the said petition. In the facts and circumstances, the said dockets orders of the Court below, which are now assailed in the present revision petition, are unsustainable under facts and in law. The plaintiff/respondent had filed her counter. Hence, the Court below ought to have disposed of the petition on merits instead of closing the same by noting that no steps are taken.”

4. On the other hand, the learned counsel for the plaintiff/respondent would submit that the defendants are tenants in the property and that they are falsely making a claim of ownership by placing reliance on exhibit B2/receipt and that the present petition is filed only to drag on the suit proceedings and that the plaintiff had filed a counter before the trial Court stating that exhibit B2 receipt is a created document and that even assuming for a moment that it is a genuine document, the contents of the same do not support the defence of the defendants and that therefore, there is no need to send the document to an expert.

5. Neither the copy of the sale deed nor a copy of the receipt is produced before this Court. Be that as it may.

5.1 The order impugned reads as follows:

“1. This petition is filed by the petitioner/plaintiff under Section 45 of Indian Evidence Act to send Ex.B2 along with other documents containing the signature of the husband of the plaintiff by name Sri Ahamad Alisha to hand writing expert to prove the Ex.B2 issued by the same person to prove and establish the case of the petitioners/defendants in the interest of justice.

2. Steps not taken. Hence, petition is closed.”

[Reproduced verbatim]

A plain reading of the order shows that the Court below did not dispose of the application on merits, but simply closed the application stating that no steps as directed earlier are taken by the defendants/petitioners.

5.2 The learned counsel for the petitioners/defendants would submit that there is no other document, which is required to be sent to a hand-writing expert and that the two documents, which are required to be sent to an expert, viz., exhibits B1 and B2 are already exhibited and are part of the record and that therefore, no further steps are required to be taken by the petitioners and that they are prepared to deposit the required amount towards expert's fee and expenses in that regard into Court, provided, the Court below considers and allows the application of the petitioners. Therefore, it is urged that the order impugned may be set aside and the trial Court may be directed to dispose of the I.A.no.401 of 2015 on merits and in accordance with law by following the due procedure.

5.3 What is to be noted is that instead of filing an application before the Trial Court to reopen the application, which was closed, the defendants have unnecessarily filed this revision petition before this Court wasting their valuable time and money and also of the plaintiff. Had the defendants/petitioners filed such an application, the trial Court might have passed an order by now. Conceivably, they were not properly advised.

5.4 As rightly pointed out, the trial Court ought not to have closed the petition without disposing of the same on merits. Having regard to the submissions and the facts, this Court is satisfied that the revision petition can be disposed of with appropriate directions.

6. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. The trial Court is directed to dispose of I.A.no.401 of 2015 in O.S.no.113 of 2007, on merits and in strict accordance with procedure established by law, as expeditiously as possible as and in any case not later than one month from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

19th February 2016
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