

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
CIVIL REVISION PETITION No. 5421 OF 2016

ORDER:

- 1) Heard the learned counsel for the petitioner and the learned counsel for the respondents. With the consent of both the counsel, the Civil Revision Petition is disposed of at the admission stage.
- 2) Aggrieved by the order dated 29.09.2016 passed in I.A.No.424 of 2016 in A.S.No.117 of 2016 on the file of the IV Additional District Judge, Tirupati, the present Civil Revision Petition came to be filed.
- 3) The petitioner, who is the plaintiff, filed O.S.No.454 of 2012 on the file of I Additional Junior Civil Judge, Tirupati for declaration of Will deed dated 16.10.1952 as null and void and consequently seeking relief of permanent injunction. The plaintiff examined P.Ws.1 and 2 and got marked Exs.A-1 to A-3. The defendants, also examined D.Ws.1 to 4 and got marked Exs.B-1 to B-35. By it's judgment dated 16.08.2016, the said suit was decreed with costs by declaring the Will deed dated 16.10.1952, alleged to have been executed by Raghava Doss Bhavaji in favour of the first defendant is void and not binding on the plaintiff and also granting permanent injunction restraining the defendants therein and their men from alienating the properties of Raghava Doss Bhavaji basing on the said Will. Challenging the same, the defendants therein filed A.S.No.117 of 2016 before the IV Additional District Judge, Tirupati. Along with the said A.S., the defendants filed I.A.No.424 of 2016 seeking stay of the operation of

the decree and judgment in O.S.No.454 of 2012. By an order dated 29.09.2016 the appellate Court granted interim stay till 25.10.2016 subject to filing of undertaking affidavits of the petitioners for the due performance of such decree or order as may ultimately be binding upon them immediately. Challenging the same, the present Revision is filed.

4) The learned counsel for the petitioner mainly submits that the order passed by the appellate court is bereft of reasons and once findings are given by the trial court that the said document is a created one, there is every likelihood of respondents misusing the same, if the stay granted by the appellate court is vacated.

5) On the other hand, the learned counsel for the respondents would submit that since the main I.A. is still pending consideration, the petitioner should have moved the same court for an appropriate relief. He submits that when the execution of Will itself is not established and when the original of the said Will is not filed, the findings of the trial court is *per se* illegal and as such the order under challenge warrants no interference.

6) It is to be noted that the plaintiff got marked Ex.A-1-certified copy of the Will executed by Raghava Doss Bhavaji. It may not be necessary to go into the truth or otherwise of the said Will in this I.A. But the trial court decreed the suit holding that the said certified copy of the Will, which has been filed, was a forged one.

The argument of the learned counsel for the petitioner is that the pendency of the I.A., as shown in the order was, only to an undertaking for due performance of such decree or order as may ultimately be binding upon them immediately, but in my view the same may not be correct.

7) As seen from the order, the stay was for a limited period. Since the I.A., filed for stay of the execution of decree has not attained any finality and as the stay of execution of the decree was granted only for a limited period, the Revision Petitioner can avail the remedy as sought for or get the stay vacated before the lower appellate court itself. Hence, I see no ground to interfere with the present Revision. However, having regard to the apprehension expressed, till such time i.e., till disposal of I.A.424 of 2006 in A.S.No.117 of 2016 on the file of IV Additional District Judge, Tirupati, the respondents herein shall not alienate the properties which are subject matter of dispute basing on the said Will.

8) With the above observation, the C.R.P. is disposed of. No costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P., shall stand closed.

C. PRAVEEN KUMAR, J

Date:13.12.2016

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