

Civil Revision Petition No.3693 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful respondent/ 2nd defendant is directed against the orders dated 24.07.2015 of the learned Special Sessions Judge for trial of SCs/ STs (POA) Act Cases-cum-Additional District Judge, Nalgonda, passed in I.A.No.509 of 2014 in O.S.No.29 of 2006 filed by the plaintiff under Section 151 of the Code of Civil Procedure, 1908, requesting to direct the 2nd defendant to deposit into Court the Fixed Deposit amount, with accrued interest thereon, kept by her in the Post Office in her name and in the name of her son/ 4th defendant.

2. I have heard the submissions of *Sri V.Ravi Kiran Rao*, learned counsel for the revision petitioner/ 2nd defendant ('2nd defendant', hereinafter) and *Sri G.Venkata Narayana*, learned counsel representing *Sri M.Raja Malla Reddy*, learned counsel for the 1st respondent/plaintiff ('plaintiff', hereinafter). I have perused the material record.

3. The case of the plaintiff in support of the aforesaid request is this:

The plaintiff filed the suit for partition of the properties of his deceased father. Along with the suit, he filed an application in I.A.No.1581 of 2006 seeking inventory. The said application was allowed and an Advocate Commissioner was appointed. At the time of inventory, the said learned Advocate Commissioner took custody of movables and documents in the house. Later, the same were illegally handed over by the said learned Advocate Commissioner to the 2nd defendant. The properties disclosed during inventory are part of the estate of the deceased father of the plaintiff and they are also liable for partition along with the plaint schedule properties. The 2nd defendant has taken away cash of Rs.10 lakhs kept in the house by the deceased father of the plaintiff. This was done at the time of inventory by the Commissioner. She also admitted that she deposited the cash of Rs.3 lakhs in her name and Rs.2 lakhs in the name of her son/ the 4th defendant in the Post

Office and that the said post office passbooks are with her. Since the said amount is a part of the estate of the deceased father of the plaintiff, the 2nd defendant cannot take away the aforesaid amount. The possession of the said cash by the 2nd defendant is illegal and detrimental to the interests of the plaintiff in the suit. To facilitate passing a decree for partition in regard to that amount also, it is just and necessary to direct the 2nd defendant to withdraw the said amounts deposited by her in the Post Office in her name and in the name of her said son and deposit into Court the said amounts with interests accrued thereon.

4. The defence of the respondents 2 to 4 is this:

The material allegations urged by the plaintiff are false. The petition is misconceived and not maintainable. The plaintiff earlier filed I.A.No.1688 of 2006 to direct the respondents 2 to 4, i.e., the defendants 2 to 4 to deposit an amount of Rs.10,00,000/- alleging that the said amount was withdrawn from the account of late Bharathaiah, the father of the plaintiff. The trial Court allowed the said petition by orders dated 07.02.2007. Aggrieved thereof, the 2nd defendant filed C.R.P.No.5089 of 2007 before this Court. This Court, by orders dated 23.12.2009, partly allowed the revision and modified the orders of the trial Court and directed the 2nd defendant/ revision petitioner to re-deposit Rs.3,50,000/- to the credit of the suit and further observed in the said orders that the amount so deposited shall be subject to the result of the suit. Accordingly, the 2nd defendant deposited the said amount in the trial Court on 23.01.2010. The said facts are within the knowledge of the plaintiff; however, when the suit is coming up for arguments, the plaintiff again filed the present petition with an ill motive and to mislead the trial Court. Without cooperating for the disposal of the suit, the plaintiff filed the present petition to harass the defendants 2 to 4.

5. At the hearing, no oral and documentary evidence was adduced. The trial Court having considered the pleadings and taken into consideration the admissions said to have been made by DW1 in her cross-examination allowed

the petition of the plaintiff and directed the 2nd defendant to deposit into Court on or before 17.08.2015, a further amount of Rs.5,00,000/-, with interest accrued thereon, which was said to have been kept in the Post Office by her in her name and in the name of her said son. Therefore, the aggrieved 2nd defendant is before this Court.

6. At the hearing, the learned counsel for both the parties reiterated the respective contentions of the parties.

7. The learned counsel for the 2nd defendant would further submit that the trial Court failed to consider essence of the earlier orders of this Court and erroneously appreciated the evidence and pre-judged the matter involved in the suit while allowing the petition and giving a direction to the 2nd defendant to deposit Rs.5,00,000/- with interest thereon into Court. He would also submit that even in the earlier round of litigation also, the plaintiff stated before this Court that the 2nd defendant has withdrawn Rs.10,00,000/-; but, the 2nd defendant admitted withdrawal of Rs.5,00,000/- only and that therefore, this Court directed the 2nd defendant to re-deposit Rs.3,50,000/- only and also held that the amount deposited shall be subject to the result of the suit. He, therefore, prayed for setting aside the order.

8. Learned counsel for the plaintiff supported the orders of the Court below and submitted that since there are admissions in the evidence of DW1, the order directing the 2nd defendant to deposit further amount of Rs.5,00,000/- with interest accrued thereon was passed by the trial Court and that the trial Court was justified in passing the said orders.

9. I have given earnest consideration to the facts and submissions. The suit is at the stage of arguments is not in dispute. The crux of the matter involved in the present revision is as to whether the amount withdrawn and/ or withheld by the 2nd defendant is Rs.10,00,000/- or Rs.5,00,000/-. This issue was earlier considered by this Court while disposing of the earlier revision referred to supra. In the orders passed in the said revision, this Court noted

that the 1st respondent/plaintiff stated that the 2nd defendant has withdrawn Rs.10,00,000/- but the 2nd defendant admitted that about Rs.5,00,000/- was withdrawn and that a part of the said amount was spent on the education of the children. Since the controversy is as to whether the quantum of amount was Rs.10,00,000/- or Rs.5,00,000/-, the same has to be resolved by the trial Court while finally adjudicating the issues settled in the suit for determination. In the well considered view of this Court, it is not just and fair to pre-judge the said matter by appreciating the evidence of one witness brought on record or a part thereof in a piecemeal manner. The evidence relating to one facet and relevant to the decision on one issue has to be read as a whole and evaluated in a comprehensive manner and not little by little or a little at a time. Be that as it may, while considering similar contentions of both the parties, this Court in its earlier orders in C.R.P.No.5089 of 2007 directed the 2nd defendant to re-deposit Rs.3,50,000/- within four weeks from the date of the said orders; and the said amount is accordingly deposited by the 2nd defendant is not in dispute. In the facts and circumstances of the case and in the considered view of this Court the issue or incidental issue whether or not the 2nd defendant would be liable to deposit any further amount would depend on the answer to the question as to what was the exact amount in controversy. And the said question has to be decided after apposite evaluation of the evidence at an appropriate final stage of the matter. Therefore, pre judging the said controversial matter at an interlocutory stage is not just and fair and is unwarranted. Viewed thus, this Court finds that there is acceptable merit in the contentions of the revision petitioner.

10. On the above analysis this Court finds that the trial Court is not justified in passing the orders impugned in this revision and that therefore the order of the trial Court is liable to be set aside.

11. In the result, the Civil Revision Petition is allowed and the order dated 24.07.2015 passed by the trial Court in I.A.No.509 of 2014 in O.S.No.29 of 2006 is set aside. As it is stated that the suit is at the stage of arguments, it is

needless to observe that the trial Court shall decide the suit finally on merits, uninfluenced by the observations, if any, made by this Court in the orders passed in the earlier revision or in the instant revision.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

15th November, 2016
RAR

