

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION Nos.3640 & 4328 of 2016

COMMON ORDER : (Oral)

Vide the present petitions, petitioners have challenged the order dated 29th April 2016 passed by the Senior Civil Judge, Gurajala in I.A.Nos.121 and 122 of 2016 respectively, in O.S.No.246 of 2012.

2. I.A.No.121 of 2016 is filed by the petitioners under Order 8 Rule 1(A) of CPC to receive the list cited document and mark the same as an exhibit on their behalf.

3. I.A.No.122 of 2016 is filed by the petitioners under Order 18 Rule 17 and Section 151 CPC to recall PW-1 for marking the Will dated 28.04.1986 as an exhibit on their behalf.

4. It is not in dispute that the petitioners were shown as defendants 1 and 2 in the main suit. The Will dated 28.04.1986 was executed by one Perla Chandramma in favour of Putta China Nagaiah and Putta Saidulu (Defendants 3 and 4).

5. The respondent/plaintiff filed the main suit for declaration and consequential permanent injunction over the suit schedule property. Case of the petitioners before the Court below was that they had purchased the suit schedule property from defendants 3 and 4 and have been in continuous possession and enjoyment of the same. In the written statement filed by them, a clear reference was made that defendants 3 and 4 had derived title over the suit schedule property by way of Will executed by Perla Chandramma and the said document was not traced at the time of filing written statement and now it is traced, as such, their petition may be allowed.

6. The respondent/plaintiff has filed the main suit against the petitioners/defendants 1 and 2 as well as Putta China Nagaiah, Putta Saidulu and Putta Lingaiah (Defendants 3 to 5) seeking the relief of declaration of title over suit schedule property and consequential permanent injunction. After receipt of summons, defendants 3 and 5 remained *ex parte*, whereas defendants 1, 2 and 4 are contesting the main suit. The trial in the main suit is at the stage of defendants' evidence and the evidence of defendants 1 and 2 is already closed.

7. The petitioners filed I.A.No.122 of 2016 to reopen their evidence for marking the Will dated 28.04.1986 alleged to have been executed by Perla Chandramma. The learned Court below has dismissed the said application on the ground that the petitioners are not parties to the said document, as such, they are not entitled for any claim as sought in the aforesaid applications.

8. Moreover, in the pleadings, nowhere it is stated that in their written statement they have taken the ground that they purchased the property pursuant to the Will dated 28.04.1986 and said Will is not traceable. In addition, no permission is sought from the Court that the said Will would be filed subsequently as and when traced.

9. Finding no merit in these petitions, same are accordingly dismissed. No costs. Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

24th March 2017

ajr