

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.4477 OF 2016

ORDER:

The petitioner who is plaintiff in O.S.No.185 of 2009 maintained the suit against the 4 defendants including the defendants 1 and 2 father and brother and the other defendants 3 and 4 are alienees from them, for partition of the plaint schedule properties and for allotment of 1/3rd share therein claiming as joint family coparcenary properties and the suit is under contest by the defendants saying the plaintiff is not the daughter of the 1st defendant and sister of the 2nd defendant. The suit is while under trial after completion of evidence posted for arguments, I.A.No.71 of 2016 covered by the impugned dismissal order dated 01.08.2016 filed by the plaintiff under Order VII Rule 14(a) CPC to receive three documents viz; alleged original unregistered gift settlement dated 16.05.1996, the alleged original tax receipt with regard to part of the suit land dated 23.08.2012 and so called birth certificate issued by Doctor K.Sipathi Reddy, a private doctor of Kadapa, on 01.09.1997. The affidavit averments show that while the 1st defendant filed petition to reopen the evidence to depose stating the plaintiff is not his daughter and in the course of searching in the house the plaintiff found these three documents which are relevant to prove and support the suit claim, hence, to re-open her evidence. The same was opposed by saying the alleged finding of the so called three important documents sought to receive is a false story and the suit filed is for partition and separate possession of entire suit properties and never pleaded about unregistered gift settlement or any payment of tax or alleged place of birth and she did not even refer the documents in the cross-examination of defendants much less in her evidence as plaintiff

and the application is only meant to delay the proceedings with inconsistent versions and liable to be dismissed and that there is no application filed for the purpose of so called documents to receive if at all to mark through P.W.1 to recall and on that ground also the petition is to be dismissed.

2. The documents receive petition referring to re-open, it is not stated that she is going to depose but not examine any other witness with reference to the documents for filing along with any application to recall. Once such is the case, it is difficult to find fault for not filing with supporting affidavit another petition for recall in considering whether the documents to receive or not. So far as the first document concerned, it is of the year 1996 and plaintiff is in custody of the same. What the plaintiff in the affidavit says is she, while searching in the house, found the document so also the birth certificate issued by a private hospital and the so called tax receipt. The receiving of documents is only by explaining the cause for delay if justified or not. It is not the stage to consider on relevancy and through whom it is to prove. When such is the case and from her say of she paid the tax and she was born in a private hospital and there is unregistered gift in her favour, what all the counter allegations of the defendants is that she did not whisper about its existence. There is no single sentence to say those are fabricated and forged documents created recently to serve the purpose of the suit claim or to defeat the defence of the defendants.

3. Having regard to the above, the Court ought not to have been dismissed the application but for allowing if at all subject to costs. In so far as the admissibility of the unregistered gift concerned, it is no doubt if any objection to raise for decision while marking including as to stamp duty to impound by the Court or to refer to the District Registrar and if

duly stamped, for any collateral purpose to receive or not and it is premature to decide on that aspect while receiving but for left open to mark or not from the objections raised or otherwise of any requirement of stamp duty with penalty. So far as the other two documents, those are also while marking any objection of the defendants, it is left open to raise to decide ultimately as laid down in the expression of the Apex Court in *Bipin Shantilal Panchal V. State of Gujarat*¹

4. In the result, the revision is allowed. There is no order as to costs. Pending miscellaneous petitions, if any, in this revision shall stand closed.

Date:03.01.2017
b/ o.
Vvr



Dr. B. SIVA SANKARA RAO, J

¹ (2001) 3 SCC 1 : AIR 2001 SC 1158