

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.4172 of 2017

ORDER:

1) The present Civil Revision Petition came to be filed under Article 227 of the Constitution of India, questioning the order dated 09.08.2017, passed in O.S.No.33 of 2006 on the file of the III Additional District Judge, Tirupati, wherein the trial Court rejected the request of the petitioners/ defendants to receive the un-registered 'WILL' and mark the same as exhibit.

2) The facts in issue are as under:

The respondents herein filed O.S.No.33 of 2006 seeking declaration of title over the plaint schedule property and consequently to cancel the sale deeds dated 17.02.2004 and 20.02.2004, which are in the names of the defendants and also for grant of permanent injunction restraining the defendants, their men etc. from in any way interfering with the peaceful possession and enjoyment of the plaintiffs over the plaint schedule property. After completion of evidence of DWs.1 to 3, the defendants filed a memo along with the chief affidavit of DW.4, to receive the original un-registered 'WILL' dated 12.10.1917 and mark the same as exhibit.

The plaintiffs filed their objection stating that the defendants are not claiming rights over the said 'WILL'. It is also stated that since Subramanyam Chetty and Veeraswami Chetty have already relinquished their rights over the properties of Yandai Chenchiah Chetty under registered relinquishment deed dated 10.12.1938, which was marked as Ex.30 in the suit, the 'WILL' is not relevant. Further, DW.4 is not a competent person to produce the same as he is neither a beneficiary nor claiming the suit property under the said 'WILL'. It is also stated that the alleged 'WILL' is a fabricated and forged one and as such the same cannot be received and marked as exhibit.

3) After considering the rival submissions made, the trial Court rejected the request for marking the un-registered 'WILL' dated 12.10.1917. Aggrieved by the same, the present revision petition is filed.

4) Two main grounds are urged by the learned counsel for the petitioners. According to her, since the suit is for declaration of title, the rights of defendants are gravely prejudiced if the said document is not brought on record. She further contended that the trial Court erred in passing the judicial order on a memo filed.

5) Insofar as the second argument is concerned, it is to be noted that the petitioners filed memo along with the chief affidavit of DW.4 to bring the un-registered 'WILL' on record. The same was rejected on merits. That being the position, the petitioners could not have any grievance that the trial Court erred in passing an order basing on the memo. That ground alone is sufficient to reject the request of the petitioners.

6) It is to be noted here that the 'WILL' is said to have been executed by Yanadi Chenchiah Shetty on 12.10.1917. The plaintiffs in their objections before the trial Court contended that the defendants never claimed their rights under the said 'WILL'. Further, the petitioners' vendor's vendor did not file the above 'WILL' in the previous suit O.S.No.122 of 1984 filed by one P.Sriramamurthy, for declaration of title against the predecessor-in-title of the defendants therein.

7) It is to be noted here that the impugned order discloses that Subramanyam Chetty and Veeraswamy Chetty relinquished their rights over the schedule property under a relinquishment deed dated 10.12.1938. As the defendants are not claiming rights over the schedule property under the 'WILL' and the beneficiaries of the 'WILL' have already relinquished their rights over the property by executing a

relinquishment deed, filling of 'WILL' at this stage is no way helpful to the petitioners and it will only prolong the court proceedings. Hence, I see no reasons to interfere with the order of the trial Court.

8) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

29.08.2017
gkv



JUSTICE C. PRAVEEN KUMAR