

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.1236 of 2017

Date: 17.03.2017

Between:

Uppati Eswara Rao

.. Petitioner

and

Mohammed Basha and 5 others

.. Respondents

Counsel for the Petitioner : Mr.P.Prabhakar Reddy

The Court made the following:



Order :

This Civil Revision Petition arises out of Order, dated 30.08.2016, in IA.No.270 of 2016 in OS.No.944 of 2011, on the file of the V Additional Junior Civil Judge, Visakhapatnam.

Heard Mr.P.Prabakar Reddy, learned Counsel for the petitioner, and perused the record.

The petitioner has filed the afore-mentioned suit for permanent injunction restraining the respondents from interfering with his possession and enjoyment of the suit schedule property. Respondent Nos.3 and 2 are the step brother and sister-in-law respectively of the petitioner. After trial was completed, the petitioner has filed IA.No.270 of 2016 under Order XVI Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for issuing summons to respondent No.3 with a direction to him to appear before the Court for giving evidence with regard to will, dated 10-06-1986, executed by his father. This application having been dismissed, the petitioner has filed this Civil Revision Petition.

As observed by the lower Court, the petitioner has neither included respondent No.3 in his list of witnesses nor atleast sought for summoning him during the pendency of the trial. The petitioner also failed to explain as to the reason for his not filing the

said Application at appropriate time. The lower Court has, therefore, rightly dismissed the same as highly belated.

In addition to the above, I am of the opinion that in a suit for permanent injunction, the petitioner has to *prima facie* establish his possession of the suit schedule property though the title may be incidentally looked into by the Court. Therefore, in my opinion, summoning of respondent No.3 with reference to a will purportedly executed by his father may not be necessary for proper and effectual adjudication of the suit. Such questions have to be decided in a suit filed for declaration of title. For the aforementioned reasons, I do not find any error in the order of the lower Court.

The Civil Revision Petition, accordingly, stands dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.1654 of 2017, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 17th March, 2017
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