

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.5442 of 2016

ORDER :

This Civil Revision Petition is filed challenging the order dt.20.06.2016 in I.A.No.96 of 2016 in O.S.No.308 of 2009 of the Principal Senior Civil Judge, Kovvuru, West Godavari District.

2. Petitioner herein is the 2nd defendant in the suit. The respondents 1 to 7 herein filed the suit against the petitioner and the 8th respondent/1st defendant for declaration of title to the plaint schedule property and for recovery of possession of the same apart from mesne profits.

3. The 1st defendant filed written statement disputing the suit plaint contentions and contending that he sold the property to the petitioner/2nd defendant. Along with the written statement, he filed the sale deed executed by him in favour of the 2nd respondent as well as the reply notice dt.28.09.2009. The 1st defendant subsequently died.

4. The petitioner also filed written statement asserting that he was sold the property by the 1st defendant and he is in possession thereof.

5. The trial commenced and the evidence on the side of the defendants was closed in September, 2015. Thereafter, the respondents/plaintiffs' side arguments were heard.

6. At that stage, the petitioner filed I.A.No.1390 of 2015 to recall him on the ground that by mistake the reply notice copy was not marked and instead of it, a sale deed was marked as Ex.B5.

7. The said I.A. was allowed on 20.01.2016.

8. When the suit was coming on for adducing the evidence of DW1, petitioner again filed I.A.No.96 of 2016 in December, 2015 requesting the Court to receive xerox copies of Pattadar Pass Book and Title Deeds issued in favour of the deceased-1st defendant. In the affidavit filed in support of this application, he stated that the originals of these documents had been given to him by the 1st defendant when he purchased the property on 10.01.2008; thereafter, he surrendered the originals of these documents to the revenue officials and obtained Pattadar Pass Books and Title Deeds; and since the originals of these documents were unavailable with him, the photostat copies of the said documents available in his custody should be accepted as secondary evidence.

9. This application was opposed by the respondents, who contended that photostat copies are inadmissible in evidence and since it is not the case of the petitioner that original of the Pattadar Pass Book and Title Deed issued to 1st defendant are lost, they cannot be received as secondary evidence.

10. By order dt.20.06.2016 the Court below dismissed the said application. It held that the petitioner has filed this application without laying any foundation as required under Section 64 of the Evidence Act, 1872, that too, after the arguments on the side of the respondents had been heard.

11. Challenging the same, this Revision is filed.

12. Counsel for the petitioner contends that it is necessary to mark these documents to establish the title of the 1st defendant and defend the suit as a purchaser from the 1st defendant.

13. In my considered opinion, this contention is not available to the petitioner, for the reason that, the main issue in the suit is about the title to the property, which is sold to the 2nd defendant by the 1st defendant. Therefore, when the exclusive title of the 1st defendant to the property is in issue, the photostat copies of the Pattadar Pass Books and Title Deeds do not in any way advance the case of the petitioner, not only because he has not laid any foundation under Section 64 of the Evidence Act, 1872 for receiving them as secondary evidence, but also because he can always summon the originals of the said documents from the revenue authorities, to whom he claimed to have surrendered them. Petitioner's evidence had been closed on 08.09.2015 and the arguments on the side of the respondents/plaintiffs had also been heard. Therefore, I do not find any error of jurisdiction in

the order passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

20th January, 2017.

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