

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4129 OF 2017

ORDER:

This civil revision petition is filed questioning the order dated 02.08.2017, passed by the IV Additional District Judge, Nellore in I.A.No.63 of 2017 in O.S.No.49 of 2009, wherein and whereby the application filed by the petitioner-plaintiff under Section 45 of the Indian Evidence Act, 1872 seeking to send the Will dated 19.12.2008 allegedly executed by the father of the petitioner/plaintiff in favour of the 2nd defendant to the Handwriting expert viz., the Forensic Science Laboratory, Redhills, Hyderabad for comparing with the signatures of the Testator with the admitted signatures available and to give opinion, was dismissed.

It is the case of the petitioner that she had filed the above said suit for partition and in the written statement filed by the respondents-defendants who are the family members of the petitioner, they had claimed certain rights by virtue of the Will dated 19.12.2008. However, though the suit is of the year 2009, the original Will dated 19.12.2008 was filed before the Court below only on 10.03.2017 and in those circumstances to bring the fact that as to whether the will is a forged one, the petitioner filed the impugned I.A to send it to the Handwriting expert at the Forensic Science Laboratory, Redhills, Hyderabad for comparing with the signatures of the Testator with the admitted signatures available. The same was dismissed by the Court below erroneously on the

ground that the petitioner-plaintiff did not file any documents or papers which bears the signatures of her father late Ramaiah. As a matter of fact the petitioner also filed another application in I.A.No.525 of 2017 seeking a direction to the Senior Manager, S.B.I. Railway Feeders Road Branch, Nellore to cause production of the document belonging to the deceased Potti Ramaiah, who is the executant of the Will. The Court below without appreciation of the fact that there is no other way for the petitioner to bring the factum of the Will is a forged dismissed the impugned application erroneously.

Having considered the submission of the learned counsel for the petitioner, at the outset, it may be noted that admittedly the suit is at the stage of arguments. The suit is of the year 2009. It is for the petitioner-plaintiff who is aware of the execution of the will dated 19.12.2008 as she had pleaded that the respondents are claiming right over the suit schedule property based on the forged and fabricated will, to prove the same. Petitioner had also filed a Xerox copy of the alleged will along with the plaint. Having filed the suit at the earliest point of time, petitioner did not take any steps seeking the original of the will to be filed into the Court which would have enabled the petitioner to have approached the Court below for sending the same to the Handwriting expert, even assuming such requirement is there. It may also be noted that even in the written statement, the respondents defendants also relied on the Will and they had specifically pleaded that the will was executed as per law and the allegations of forgery and

fabrication were denied. It is now well settled that it is for the party who relies on the particular document the burden of proof lies on him to prove it. The principles governing the method and manner of proving a will by the proponent of the will are well settled. Apart from the fact that the Court below had categorically recorded that the petitioner had not filed any admitted signatures though the petitioner had made an application seeking to summon such documents from the Bank. In the present set of facts, it is for the petitioner plaintiff to make out a case that she is entitled for the relief claimed by adducing the evidence and it is for the respondent defendants who relied on the will for claiming rights over the properties to sustain their plea as pleaded in the written statement.

In those circumstances and considering the fact that the suit is of the year 2009 and admittedly the suit being at the stage of arguments, dismissal of the impugned I.A not acceding to the request of the petitioner cannot be found fault and there is no error in the order of the impugned I.A. There are no merits in the civil revision petition.

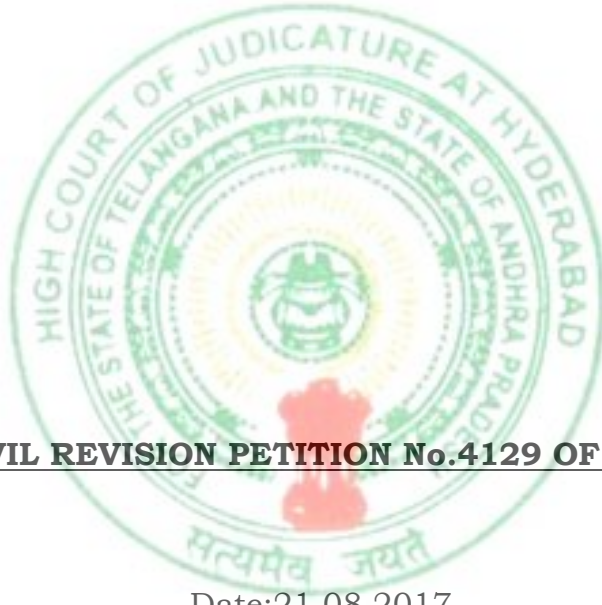
Accordingly, the civil revision petition is dismissed. Miscellaneous petitions, pending if any shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:21.08.2017.

Gk.

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