

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.283 of 2017

Order:

This CRP is filed by the petitioners/respondents/plaintiffs aggrieved by the order dated 07.12.2016 in I.A.No.763 of 2014 in O.S.No.337 of 2011 passed by the III Additional Junior Civil Judge, Kadapa, whereunder the learned Judge allowed the petition filed by respondents/ petitioners/defendants under Order VI Rule 17 Code of Civil Procedure (for short 'C.P.C) seeking to amend the written statement.

2) The parties in this CRP are referred as they were arrayed in O.S.No.337 of 2011.

3 a) The petitioners/plaintiffs filed O.S.No.337 of 2011 seeking permanent injunction of the plaint schedule properties comprising II items against defendants. The plaintiffs case is that Item No.1 of the plaint schedule property was gifted by S.Venkata Subba Reddy and S.Gangi Reddy to the mother of the plaintiffs i.e, Guttireddy Venkata Subbamma through registered document No.1844/1970 on 01.06.1970 and upon her death, the plaintiffs succeeded the same and since then they are in continuous occupation and enjoyment of the said property. Item No.2 of the plaint schedule property was gifted by Singamreddy Venkata Subba Reddy and his brother Singamreddy Gangi Reddy to one Singamreddy Jayamma D/o.Venkata Subba Reddy through registered gift deed dated 01.06.1970. The said Guttireddy Jayamma was the wife

of the 1st plaintiff and she died on 13.07.1972. Since her death, 1st plaintiff has been in possession and enjoyment of the item No.2 of the plaint schedule property. The plaintiffs further submitted that said Jayamma had no issues as she died after two years of her marriage. The defendants tried to meddle with the suit properties without any right. Hence the suit.

b) The defendants filed written statement and contested the matter.

c) While-so, the defendants filed I.A.No.763 of 2014 to permit them to amend the written statement and take the plea that the gift deeds were forged documents and the fathers of the defendants have not executed those gift deeds.

d) The 1st plaintiff filed counter and opposed the I.A contending that the defendants filed belated application to take the plea of forgery disputing the genuineness of the registered gift deeds dt.01.06.1970 which were marked as Exs.A.1 and A.2. He further submitted that the defendants earlier filed I.A.No.337 of 2013 praying the Court to send Ex.A.1 to an expert for obtaining his opinion and the same was dismissed on the ground that forgery plea was not taken in the written statement filed by the defendants. Aggrieved, the defendants filed CRP No.4952/2013 before the High Court and the same was also dismissed. Hence present application is not maintainable.

e) After hearing both sides, the trial Court allowed the said petition by permitting the defendants to amend the written statement as prayed for.

Hence the CRP.

4) Though notice was served on the respondents, none appeared on their behalf. Hence heard arguments of learned counsel for petitioner Sri J.Seshagiri Rao.

5 a) Learned counsel fulminated the order of the Court below firstly on the ground that the petition was filed by the respondents/defendants at a belated stage when the matter was coming up for cross-examination of DW.2 and as per the proviso to Order VI Rule 17 CPC, no amendment shall be allowed after commencement of the trial and as such the trial Court ought to have dismissed the petition in limini.

b) Secondly, he would contend that the suit in question is an injunction suit wherein the lawful possession of either party on the date of suit is only the issue and if it were the case of defendants that the suit gift deeds were forged documents, they could have laid a separate suit for declaration to that effect and claiming right in themselves but they cannot question the genuineness of the gift deeds at this belated stage.

c) Thirdly, he argued that in the written statement initially the defendants have not taken the plea of forgery and that was why I.A.No.337 of 2013 filed by them to send Ex.A.1 to the expert was dismissed holding that the plea of forgery was not taken in their written statement and in CRP No.4952 of 2013 also the said order was approved. In this backdrop, he would argue, the petition to take up forgery plea is not maintainable.

6) The point for determination is:

“Whether there are merits in this CRP to allow?”

7) **POINT:** The plaintiffs are claiming plaint schedule mentioned Items 1 and 2 properties under two gift deeds dated 01.06.1970 executed by Late S.Venkata Subba Reddy and his brother S.Gangi Reddy, who are the fathers of defendants 1 and 2 respectively. The defendants filed written statement and contesting the suit. As can be seen from the written statement, admittedly there is no clear-cut plea to the effect that the suit agreements are forged documents. However, Para 5 of the written statement reads thus:

“Para 5: The documents mentioned in Para 5 of the plaint are all got up documents to suit the case of the plaintiffs.”

From the above averments it is clear that the defendants took a faint plea that the gift deeds were got up documents i.e, they were fabricated. However, as stated supra, there is no emphatic plea that the documents were forged. Now by way of amendment, the defendants sought to take a plea that the father of the first defendant—Singamreddy Venkata Subba Reddy has never executed any documents much-less the gift deeds and he was an illiterate who could affix only thumb impression and he cannot even put his signature and further, there was no reason for him to execute such gift deeds and the L.T.Is on the alleged gift deeds were forged to have unlawful gain. The said S.Venkata Subba Reddy had executed registered gift deed dated 31.10.2006 in favour of defendants 1 and 2 which contains the L.T.Is of

the said Venkata Subba Reddy. The passbooks issued in favour of Venkata Subba Reddy also contains his L.T.Is. Thus the defendants now want to take an emphatic plea of forgery and narrate the reasons to treat those gift deeds as forged. The impugned order shows that the trial Court with the observation that it being a trial Court, had to determine the real question of controversy between the parties, allowed the petition. In my considered view, the order impugned does not suffer from any infirmity. As stated supra, the petitioners have earlier taken a faint plea that the suit documents were got up documents i.e, fabricated documents and now only by way of narration of their earlier stand, want to amend their written statement. In such an event, delay cannot be a ground to reject their plea as valuable rights in respect of the properties are at stake for both the parties.

8) In the result, I find no merits in the CRP and accordingly, the same is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27-03-2017

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