

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.202 of 2016

ORDER:

This civil revision petition is filed under Section 115 of CPC, challenging the order dated 10.7.2014 in E.A. No.792 of 2012 in E.A. No.717 of 2010 in E.P. No.10 of 1998 in O.S. No.109 of 1977 on the file of the Court of Principal Senior Civil Judge, Ongole.

2. Heard the learned counsel for the petitioner and learned counsel for the respondents.

3. A perusal of the record reveals that the Cheedara Venkata Subbamma filed O.S. No.109 of 1977 against the respondents for partition of the suit schedule property. After fullfledged trial, the suit was allowed on 31.10.1983 by granting preliminary decree. The respondents did not prefer appeal against the judgment and decree dated 31.10.1983 in O.S. No.109 of 1977. The final decree was also passed on 25.6.1996. Venkata Subbamma filed E.P. No.10 of 1998. During the pendency of E.P., Venkata Subbamma died and Nallajala Venkateswarlu was brought on record as legal representative of Venkata Subbamma. Nallajala Venkateswarlu also died. The petitioner filed E.A. No.717 of 2010 under Order XXII Rule 3 of CPC to permit him to come on record as legal representative of Nallajala Venkateswarlu and the same is pending. Pending E.A. No.717 of 2010, the petitioner filed E.A. No.792 of 2012 under Order VII Rule 14 of CPC to receive the original Will dated 18.12.2001 by condoning the delay in filing the same. By the impugned order dated 10.7.2014, E.A. No.792 of 2012 was dismissed. Hence, the present civil revision petition.

4. As rightly pointed out by the learned counsel for the respondents, there is no mention in E.A. No.717 of 2010 that Nallajala Venkateswarlu executed Will dated 18.12.2001 in favour of the petitioner. The learned counsel for the petitioner submitted that along with E.A. No.717 of 2010, the petitioner filed certified copy of Will dated 18.12.2001. Whether the petitioner filed copy of the Will or not is purely a disputed question of fact, which cannot be gone into in this civil revision petition. Ultimately, the trial court has to consider whether the petitioner has filed certified copy of the Will along with E.A. No.717 of 2010. The present petition i.e., E.A. No.792 of 2012 is filed to receive original Will dated 18.12.2001. The learned counsel for the respondents strenuously submitted that the Will itself is a forged one; therefore the same cannot be received. Receiving of a document is entirely different from marking or admitting of document. It is needless to say, at the stage of receiving of document, the Court ought not to have expressed any opinion touching the validity or otherwise of the document in question. Whether the document in question is legally admissible or not will be decided by the trial Court at appropriate stage. Even if the document is received, the same would not cause any prejudice to the respondents. On the other hand, if the same is not received, it may not be possible for the petitioner to ventilate his legitimate grievance. The trial court dismissed E.A. No.792 of 2012 on the sole ground that there is no pleading in E.A. No.717 of 2010 with regard to existence of Will dated 18.12.2001. All these aspects have to be considered by the trial court, while disposing of E.A. No.717 of 2010. The Court has

to confine itself to the extent of receiving of document but not to consider the other legal or factual aspects. The petitioner has assigned reasons much less cogent and valid reasons to condone the delay in filing the petition to receive documents. Without considering the above aspects, the trial court dismissed E.A. No.792 of 2012.

5. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the order dated 10.7.2014 in E.A. No.792 of 2012.

6. In the result, the civil revision petition is allowed, setting aside the order dated 10.7.2014 in E.A. No.792 of 2012. Consequently, E.A. No.792 of 2012 in E.A. No.717 of 2010 in E.P. No.10 of 1998 in O.S. No.109 of 1977 on the file of the Court of Principal Senior Civil Judge, Ongole is allowed to receive original Will dated 18.12.2001 only subject to proof and relevancy. Miscellaneous petitions, if any pending in this civil revision petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 16.2.2017.
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