

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.987 & 1720 of 2017

COMMON ORDER:

CRP No.987 OF 2017

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt.08.12.2016 in I.A.No.610 of 2016 in O.S.No.1409 of 1998 passed by Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, dismissing application filed under Order VIII Rule 1-A (3) CPC refusing to receive the documents set out in the list filed along with the petition on various grounds.

The petitioner/defendant No.2 filed O.S.No.2278 of 2005 for recovery of possession of part of the schedule, which is a subject matter of O.S.No.1409 of 1998. But, along with the suit i.e., the plaint in O.S.No.2278 of 2005, the petitioner filed certain documents, which are sought to be received by granting leave under Order 8 Rule 1-A(3) CPC, and those documents were taken back under Order 13 Rule 9 of CPC by filing an application in the year 2008 and thereafter the suit O.S.No.1409 of 1998 was dismissed and later in CMA No.1155 of 2009, the suit was restored to its file and thereafter both the suits were clubbed, tried jointly recording evidence in O.S.No.1409 of 1998. Therefore, the

documents were not filed again after taking back those documents by filing an application under Order 13 Rule 9 CPC and requested the Court to receive those documents as they are necessary for deciding the real controversy between the parties since it is a registered Will allegedly executed by the mother of the petitioner.

The respondents filed Counter denying material allegations while contending that it is not the appropriate stage to receive the documents and finally in para No.7 of the Counter, the respondents requested to afford reasonable opportunity to cross examine the witness in the event of receiving documents.

The trial Court, after hearing both the parties, dismissed the petition on the ground that no specific reasons were assigned in the petition.

Aggrieved by the Order in I.A.No.610 of 2016 in O.S.No.1409 of 1998, the Civil Revision Petition is filed on various grounds.

During hearing, Sri K.K.Waghray, while reiterating the contentions, placed reliance on a judgment of this Court reported in *N. Premaiah and others v. Narmala Deva Raj and another*¹ to contend that such delay can be

¹ 2015(4) ALT 729

condoned on payment of costs to compensate the loss that sustained by the respondents and in the same lines, he relied on a judgment of this Court in *Lukka Srinivasa Rao @ Venkateswarlu v. Lukka Sivaiah*². On the strength of these principles, he requested to receive the documents to allow the revision setting aside the Order passed by the trial Court in I.A.No.610 of 2016 and receive the documents by exercising power under Order 8 Rule 1-A(3) CPC.

The counsel for the respondent, though opposed initially, requested this Court to pass appropriate Order at least on terms.

Admittedly, the petitioner filed those documents including M.O. Coupons along with the plaint in O.S.No.2278 of 2005 filed for recovery of possession of part of the schedule property on the strength of the registered Will allegedly executed by the mother of the petitioner and they were taken back. They complied Order 8 rule 1-A (1) CPC, because of receiving back those documents by filing a petition for return of the documents, they could not place the documents on record. Subsequently, the suit O.S.No.1409 of 1998 on its restoration to its original number, the documents are required to be filed for deciding the real controversy.

² 2016(1)ALT 36

Both the parties are claiming title to the property as a legatees under two different Wills and the question to be decided by the Court is which is the latest Will and it is depending on its genuineness and validity etc., In such case, to decide the real contravary between the parties, the documents are relevant and necessary to put a quietus to the litigation effectively.

In *N. Premaiah and others and Lukka Srinivasa Rao's* case, this Court held that when the documents are crucial and to decide the real controversy between the parties, the Court can receive the documents at least on terms. Therefore, by following the principle laid down in the above two judgments, this Petition is allowed on payment of costs of Rs.2000/- to the respondents and the petitioner is directed to pay costs to the respondents within a period of 15 days from today and on such payment, the trial Court is directed to receive the documents and afford an opportunity to the respondent to cross examine the witness on the Will.

With the above observation, this Civil Revision Petition is disposed of.

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In view of the disposal of C.R.P.No.987 of 2017, no further Orders need be passed in this Petition. Hence, this Civil Revision Petition is dismissed as infructuous.

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

M. SATYANARAYANA MURTHY, J

Date: 10-07-2017.
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