

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP.No.40 of 2017

ORDER:

This Revision is filed challenging the order dt.28.11.2016 in I.A.No.1075 of 2016 in O.S.No.264 of 2010 of the IV Additional District Judge, Tanuku.

2. The petitioner herein is plaintiff in the above suit. She filed the suit for partition of the plaint schedule properties. The 1st respondent is her mother, and the 2nd respondent is her brother.

3. The 2nd respondent is contesting the suit on the ground that there is a Will dt.07.10.2001 executed by his father in respect of the plaint schedule properties.

4. The 1st respondent remained *ex parte*.

5. Trial concluded, and the matter was posted for arguments. At that stage, the petitioner filed I.A.No.1075 of 2016 to summon the 1st respondent as a witness invoking Order 16 Rule 14 of Civil Procedure Code. It was alleged that 2nd respondent threatened 1st respondent and she was terrified of him, and so she was not contesting the suit.

6. Counter-affidavit was filed by 2nd respondent opposing this application. He contended that Order 16 Rule 14 of Civil Procedure Code empowers only the Court to *suo moto* summon any person or

party to the suit as Court witness, and it cannot be invoked by petitioner to summon the 1st respondent as a witness.

7. By order dt.28.11.2016, the Court below dismissed the application. It held that Order 16 Rule 14 of Civil Procedure Code cannot be invoked as a matter of routine and the power under the said provision is to be exercised by the Courts guardedly; that if really the 1st respondent had interest in the plaint schedule property, she would have come and contested the suit, but she remained *ex parte*; that at the time of arguments the respondents' counsel stated that 1st respondent was aged about 80 years and was not in a position to come to the Court and give evidence, and therefore, the 1st respondent may not be capable of understanding the proceedings; that there was no material to show that 1st respondent was intimidated by 2nd respondent and because of that reason, she could not come to the Court.

8. Challenging the same, the present Civil Revision Petition is filed.

9. Though the counsel for petitioner sought to contend that the Court below should have allowed the said application and directed the 1st respondent to be summoned as a witness so as to do justice to the parties, I am of the opinion that the application to summon the 1st respondent itself has been filed at the stage of arguments without placing any material to show that the 1st respondent was intimidated by 2nd respondent.

10. The power under Section 16 Rule 14 of Civil Procedure Code to summon any person including a party to the suit as a witness has been held by the Courts to be exercised only guardedly and not as a matter of routine.

11. No exceptional circumstance exists in the present case to warrant the summoning of 1st respondent as a witness at the instance of petitioner.

12. I, therefore, do not find any error of jurisdiction in the order passed by the Court below in dismissing I.A.No.1075 of 2016. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

13. Miscellaneous petitions, pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 20-01-2017
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