

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.2163 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, came to be filed by the petitioner/plaintiff challenging the order dated 04.01.2017 passed in Interlocutory Application No.1083 of 2016 in Original Suit No.656 of 2010 by the Additional Senior Civil Judge, Tirupati, wherein the petition filed under Section 151 CPC to re-open the plaintiff's evidence was dismissed.

2. The deceased 1st petitioner filed the aforementioned suit for declaration of title and delivery of possession of the subject property. In the said suit, after closure of the evidence on both sides, the suit was posted for arguments. But, however no arguments are advanced till date. The present petition came to be filed for reopening the evidence of the plaintiff, to adduce the evidence of one of the attestors to the will.

3. The 2nd petitioner herein is recognized as a legal representative of the deceased 1st plaintiff. It is said that the petitioner was under the impression that since the Will dated 09.03.2012 is a registered one, there is no need to examine the attestors of the Will, but, he has been advised to examine one of the attestors of the Will so as to avoid technicalities. It is his case that if

an attesor is examined to speak about the contents of the Will, no prejudice would be caused to other side.

4. A counter came to be filed disputing the averments made in the affidavit filed in support of the said petition. It is said that sufficient time was granted to the petitioner to adduce further evidence on his behalf and that the defendant's evidence is already over. After completion of the evidence on both sides, the suit was posted for arguments. Such being the position, the request of the petitioner cannot be considered at this stage.

5. After considering the rival submissions, the trial Court dismissed the said petition holding that sufficient time was granted to the petitioner to adduce evidence and that the evidence of the plaintiff was closed when they reported no further evidence. Challenging the same, the present revision is filed.

6. Learned counsel for the petitioner mainly submits that since the suit relates to the right and title over the property, examination of one of the attestors of the Will is necessary and the same would not cause any prejudice to any of the parties.

7. In spite of service of notice, there is no representation on behalf of the respondent.

8. Learned counsel for the petitioner placed on record a memo showing proof of service of notice sent on the respondent on 23.06.2017.

9. Now the question that arises for consideration is whether the request of the petitioner for examining one of the attestors of the Will can be accepted at the stage of arguments?

10. It is not in dispute that evidence on both sides is over, but according to the learned counsel for the petitioner, no arguments are advanced till date. As seen from the record, the Will is said to be a registered one and examination of one of the attestors of the Will is only to avoid technical objections in future. It is to be seen that even if the request of the petitioner is accepted, it would not cause any prejudice to any of the parties since it does not warrant framing of additional issue or otherwise. Hence, the request of the petitioner can be considered, provided, no arguments are advanced till date.

11. Accordingly, the Civil Revision Petition is allowed setting aside order dated 04.01.2017 passed in Interlocutory Application No.1083 of 2016 in Original Suit No.656 of 2010 by the Additional Senior Civil Judge, Tirupati and the petitioner is directed to produce attestors of the Will on 28.07.2017 after giving prior notice to the respondent/defendant, provided no arguments are advanced till date, in which event, the trial Court shall examine the attestors

giving sufficient opportunity to the defendant to cross-examine the said witness and thereafter, hear the arguments and pass orders.

Consequently, Miscellaneous Petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date: 14.07.2017

Note: Furnish CC within two (02) days

(B/O)

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