

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 5301 OF 2016**

**ORDER:**

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 05-02-2016 in I.A.No. 536 of 2015 in O.S.No. 12 of 2015 on the file of the Court of VI Additional District and Sessions Judge, Sompeta, Srikakulam (for short, 'the Court below'), whereby the Court below dismissed the application filed under Rule 128 of Civil Rules of Practice read with Section 151 of the Code of Civil Procedure (for short, 'C.P.C.') to send for registered Will dated 26-03-1928 from the file of Andhra Pradesh Endowments Tribunal, Hyderabad (for short, 'the Tribunal'), in O.A.No. 22 of 2002 for marking the same as exhibit on behalf of the plaintiff.

It is alleged in the affidavit filed by the plaintiff that the suit is filed for declaration of title and other consequential reliefs based on Will; that as the original Will is filed in O.A.No. 22 of 2002 and unless the same is sent for to the present suit, it is difficult for him to prove his case and requested to send for Will dated 26-03-1926

The respondents filed counter denying material allegations *inter alia* contending that earlier, the plaintiff filed an application for the same relief which was dismissed and again filed the present application under Rule 128 of Civil Rules of Practice which is also dismissed under the impugned order and that therefore the present revision is not maintainable and prayed for dismissal of the petition.

During hearing, Sri K.Manik Prabhu, learned counsel for the petitioner-plaintiff, contended that the very basis for the plaintiff's claim is Will dated 26-03-1928 and unless original of the same is marked, it is difficult for him to

prove his claim. It is also contended that the Will is now lying with the Tribunal and producing certified copy would not serve any purpose and requested this Court to order the petition.

Whereas learned counsel for the respondents would contend that in view of filing an application earlier for the same relief, the present application is not maintainable and that apart, during pendency of this revision, the petitioner filed an application to reopen the evidence and accordingly examined P.W.1 further and got marked Ex.A14 certified copy of the Will, original of which is sought to be sent for. Therefore, no useful purpose will be served if the Will is summoned and marked as exhibit before the court and prayed for dismissal of the petition.

It is a petition filed under Civil Rules of Practice which deals with the procedure to be followed by Courts in petitions filed under Order XIII Rule 10 of C.P.C. The Court can exercise power under Order XIII Rule 10 of C.P.C. to send for any document from its own file or on the file of any other court or Tribunal. Instead of filing such an application, the petitioner has filed the present petition under Civil Rules of Practice where no such application is contemplated. Learned counsel for the petitioner would contend that the Court can accept any application. Misquoting or wrong quoting of provision of law is not a ground to reject the relief if the petitioner is otherwise entitled to claim such relief.

It is the duty of every counsel to quote appropriate provision of law and cannot throw burden on Courts since they are trained in such a way and for that purpose only. They cannot shirk their responsibility to take advantage of their own fault in the petitions. However, the law declared by this Court is to do substantial justice to parties and Courts can allow such applications if the petitioner is entitled to the relief claimed in the petition. Rule 128 of Civil Rules of Practice deals with the procedure for issue of notice prescribing certain forms and according to sub-rule (1) thereof, when the Court is satisfied that original

document is required, it shall address a Letter of Request as in Form No. 22 directing the Presiding Officer of the Court to send the document and prescribed certain procedure to be followed but throwing burden on Courts by quoting wrong provision of law by counsel cannot be encouraged since there is specific purpose in quoting provision to enable the Court to come to an immediate conclusion. Therefore, such practice cannot be allowed throwing burden on Courts to pass appropriate orders by quoting wrong provision of law in petition.

The petitioner filed suit for declaration based on Will dated 26-03-1928 and filed Photostat copy of the same along with the plaint. Order VII Rule 14 (1) of C.P.C. mandates filing of documents on which the plaintiff sues or relies along with plaint and serve copies of documents. If, for any reason, any document is not in possession of the plaintiff, the plaintiff shall, wherever possible, state in whose possession or power it is. *Ex facie*, the petitioner did not comply with the requirement under Order VII Rule 14 (2) of C.P.C. and even not obtain leave of this Court under sub-rule (3) but filed the present petition under Rule 128 of Civil Rules of Practice. Even to exercise power under Order XIII Rule 10 of C.P.C., the petitioner must comply with the requirements under sub-rule (2) of Rule 14 of Order VII of C.P.C., otherwise the Court cannot order send for document by issuing Letter of Request in Form No. 22. In the absence of compliance with sub-rule (2) and obtaining leave under sub-rule (3) of Rule 14 of Order VII of C.P.C., the document which is filed before the Tribunal cannot be called for and it directly amounts to granting leave without any application, receiving documents and permitting them to mark documents. Therefore, the petitioner is not entitled to claim any relief in this petition and the order passed by the Court below does not call for interference of this Court while exercising power under Article 227 of the Constitution of India. Consequently, the order under challenge is liable to be set aside and accordingly set aside.

The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

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**M.SATYANARAYANA MURTHY, J.**

Date: 07-07-2017.

JSK

