

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.3939 of 2016

ORDER:

This civil revision petition is filed by the petitioners under Article 227 of the Constitution of India aggrieved by the order, dated 14.07.2016, passed by the IV Additional District Judge, Kakinada, passed in I.A.No.600 of 2016 in O.S.No.95 of 2012.

Heard and perused the material available on record.

The petitioners filed the I.A.No.600 of 2016 in O.S.No.95 of 2012 under Order 14 Rule 1 and Section 151 CPC praying the Court to frame the following issues:

- 1) Whether the Will dated 10.11.1995 alleged to have been executed by Nookaratnam is true, valid and binding on the plaintiffs?
- 2) Whether the judgment and decree in O.S.No. 58/1994 and A.T.C. No. 148/1991 operate as resjudicata?

When the main suit is posted for arguments, the petitioners wanted to frame the above said issues, wherein the learned trial Judge dismissed the I.A.No.600 of 2016 by observing as follows:

“7. By perusing the record it is to be seen that right from the beginning the respondent is disputing with the title and possession of the petitioners/plaintiffs by filing written statement. Basing on the pleadings on both sides after framing of issues, evidence was adduced by both parties in respect of the contentions made by them and their witnesses were also examined at length by the respective counsels and the main suit is posted for arguments. After taking number of adjournments, at present the present petition is filed by the petitioners for framing of additional issues was filed by the

petitioners/plaintiffs. As the main suit is filed for declaration of their title by the petitioners/plaintiffs and it is for the petitioner to prove his title over the plaint schedule property through oral and documentary evidence and therefore, the proposed issues were within the ambit of the issues already framed and there is no need to frame the proposed issues separately. Hence, I find no merits in the present petition at this stage. Accordingly, the point is answered.”

Learned counsel for the petitioners submitted that the earlier issues framed do not cover the ambit of the issues which are now sought to be framed and that by framing of the additional issues, the petitioners will not seek for reopening of the case and to examine the witnesses to the extent of the issues framed on the basis of the petition.

Considering the said facts and circumstances and after perusal of the record and taking into consideration the submissions made by the learned counsel for the petitioners, this Court is of the view that the framing of additional issues will not cause any prejudice to the respondents herein since the said facts were already stated in the written statement and also in the cross-examination of the petitioners done by the respondents in connection with the said facts.

Accordingly, the Civil Revision Petition is allowed by setting aside the order, dated 14.07.2016, in I.A.No.600 of 2016 in O.S.No.95 of 2012, on the file of the IV Additional District Judge, Kakinada. The learned trial Judge is directed to frame the additional issues and after hearing the arguments of both sides, the learned trial Judge is directed to pass appropriate orders, in accordance with law. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

RAJA ELANGO,J

Date: 25th January, 2017

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