

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION Nos.4414 and 4416 of 2017

COMMON ORDER:

While Civil Revision Petition No. 4416 of 2017 is filed challenging the order dated 01.08.2017 dismissing I.A.No.235 of 2017 in O.S.No.148 of 2005, on the file of the learned I Additional Senior Civil Judge's Court at Nellore, filed by the petitioner to summon the Sub-Registrar to cause production of Book No.3 of the year 1997 for ascertaining the signatures of the Gangisetty Setharavamma for comparison with the signatures of the unregistered Will dated 11.01.1997, Civil Revision Petition No.4414 of 2017 is filed challenging the order dated 01.08.2017, whereby I.A.No.264 of 2017 in the above suit filed for sending the disputed unregistered Will dated 11.01.1997 to the Handwriting expert for comparison with the Registered Will dated 04.01.1997, was dismissed.

Since the issue and the parties involved in both the Civil Revision Petitions is same, they are heard together and disposed of by this common order. The parties as arrayed in C.R.P.No. 4416 of 2016 are referred to hereinafter for the sake of convenience.

The brief facts are that the petitioner is the 3rd defendant in the suit filed by the 1st respondent-plaintiff. 1st respondent filed the suit seeking declaration with respect to the suit schedule property based on a Will dated 11.01.1997. The petitioner, having received the suit summons, failed to file the written statement and did not choose to contest the suit, at the relevant point of time, he was set *ex parte*. After long lapse of time, the petitioner filed a petition seeking to set aside the *ex parte* proceedings and sought to participate in the suit proceedings, which came to be dismissed by the trial Court. However,

considering the facts on record, this Court, while allowing C.R.P.No.2821 of 2016 on 29.07.2016, permitted the petitioner to participate in the suit proceedings from the stage at which he was stopped and the petitioner was also given liberty to adduce evidence. Thereafter, the petitioner filed the present I.A.No.235 of 2017 in O.S.No.148 of 2005, wherein it is his contention that the Will dated 11.01.1997 is a forged and fabricated one and there is a Will dated 04.01.1997, which is a registered document No.3 of 1997, marked as Ex.B.1. It is the contention of the petitioner that there is a Will dated 04.01.1997 executed by the mother of the petitioner bequeathing Item No. 3 of the schedule property in favour of the brother of the petitioner to the extent of life interest with absolute rights to the petitioner. In those circumstances, the probability of there being a Will executed on 11.01.1997, based on which the plaintiff-respondent No.1 filed the suit, is not a genuine one. In those circumstances, the petitioner seeks to send the Will dated 11.01.1997 for expert opinion to compare the same with the signatures in the Register with respect to the Will dated 04.01.1997. The said Application came to be dismissed by the Court below.

Sri P. Ganga Rami Reddy, learned counsel appearing for respondent No.1, opposed the Civil Revision Petition and submits that the petition is only to drag on the proceedings and the petitioner remained *ex parte* all through and at a belated stage, he has come up with this Application. He would also further contend that there is also no issue framed with respect to the genuineness of either the Will dated 04.01.1997 or the Will dated 11.01.1997. He has also pointed out that an issue was framed as the execution of the Will dated 11.01.1997 and with respect to the same, respondent No.1-plaitiff had adduced his evidence and there is no requirement, at this belated

stage, to summon the Sub-Registrar for production of Book No.3 of 1997 for ascertaining the signature of the executant of the Will dated 11.01.1997.

Having considered the respective submissions, the question which falls for consideration is 'whether the order of the trial Court is liable to be interfered with'.

At the outset, it may be noted that in a case based on a Will, it is for the propounder of the Will to prove its existence and the validity of the same. It is not in dispute that the 1st respondent-plaintiff has filed the suit based on the unregistered Will dated 11.01.1997, which is marked as Ex.A3. The plaintiff has adduced his evidence and the petitioner-3rd defendant had opportunity to cross-examine the plaintiff. The suit is of the year 2005 and after this Court allowed the application of the petitioner on 29.07.2016, the petitioner could have moved an Application for the reliefs claimed therein, which he did not choose to, and the said Application was moved only on 17.08.2017 at a belated stage. It may also be noted that Ex.B1 was also not filed before the Court, however, a certified copy of it was exhibited. Even, after the petitioner started participating in the suit proceedings, he did not choose to seek an issue to be framed with respect to the Will dated 04.01.1997. In other words, there is no plea with respect to their Will dated 04.01.1997, *albeit* the same is a registered Will. It is also needless to mention that in the event of there being more than one Will, it is the latest one, which will be valid, subject to the conditions, as may be contained therein. Further, as it is settled law that it is for the propounder of the Will to prove his case and considering the fact that there is no plea or no issue having been framed with respect to the genuineness of the Will, the dismissal of

I.A.No.235 of 2017 cannot be found fault and accordingly, the Civil Revision Petition is dismissed.

It is made clear that the observations made herein are only for the purpose of disposal of the Civil Revision Petition and the same shall not be construed as expressing any opinion on the genuineness or otherwise of the Will dated 11.01.1997, as Issue No.1 whether late Smt. Gangisetty Seetaravamma, mother of the plaintiff and defendants, executed a Will on 11.01.1997, as alleged by the plaintiff, is required to be decided based on the material and the evidence that is adduced in the suit.

In the light of the dismissal of C.R.P.No.4416 of 2017, which was directed against the dismissal of Application of the petitioner for summoning the 2nd respondent-Joint Sub-Registrar-I, Nellore to cause production of the Book No.3 of 1997 from the Registrar's Office, the question of sending the disputed unregistered Will dated 11.01.1997 to the Handwriting expert does not stand for scrutiny and accordingly, the C.R.P.No.4414 of 2017 also stands dismissed.

Miscellaneous Petitions, if any pending, in these Civil Revision Petitions shall also stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Date:06.10.2017.

Note: Issue C.C. forthwith.
B/o
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