

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.1009 of 2017

ORDER :

This Revision is filed under Article 227 of the Constitution of India questioning the order dt.30-01-2017 in I.A.No.63 of 2016 in O.S.No.230 of 2009 of the Principal Junior Civil Judge, Bhimavaram.

2. Petitioner herein is defendant in the suit. The said suit was filed for perpetual injunction restraining the respondents/defendants from interfering with the possession and enjoyment of the petitioner over the plaint schedule property.

3. After conclusion of plaintiff's evidence, D.Ws.1 to 4 were examined.

4. At that stage, I.A.No.63 of 2016 was filed by petitioner to refer the Will dt.05-10-2008 said to have been executed by late Cheedey Lakshmi Surya Kantamma with the admitted signatures available to the Handwriting Expert for comparison with the admitted signatures under Section 45 of the Evidence Act, 1872.

5. It is contended in the said application that in the written statement filed by 1st respondent, he had placed reliance on the said Will, that the said Will is a forged one, and therefore opinion of the Handwriting Expert is necessary.

6. This application was opposed by the 1st respondent stating that it is not the right stage to send the document in question to the Handwriting Expert.

7. By order dt.30-01-2017, the Court below dismissed the said application. It held that the suit is only one for permanent injunction wherein possession and enjoyment of the plaint schedule property as on the date of filing of the suit i.e. 12-08-2009 is relevant to be decided; that both parties filed several documents in support of their respective pleadings; the suit is not one to decide the title of the parties; and the evidence on record, which is voluminous, is sufficient to decide the issue as to whether plaintiff is entitled to injunction or not. It further held that the application was filed in 2016 at the fag end of trial and is only an attempt to prolong the matter.

8. Assailing the same, this Revision is filed.

9. Learned counsel for petitioner contended that Expert opinion on the Will Ex.B-1 dt.05-10-2008 is necessary since the 1st respondent is placing reliance on it.

10. Since admittedly the suit is only for injunction, in which primarily possession of the property on the date of filing of the suit is the relevant factor, and since title to the property is not in issue, even if the 1st respondent places reliance on the said Will Ex.B-1, I am of the opinion that there was no necessity to send it to an Expert to decide the validity of the Will. Therefore, I do not find any error of jurisdiction warranting interference by this Court under Article 227 of the Constitution of India.

11. The Civil Revision Petition is accordingly dismissed at the stage of admission. No costs.

12. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 28-07-2017

Vsv

