

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION Nos.2124 OF 2017, 2129 OF 2017, 2138
OF 2017 & 2709 OF 2017.

COMMON ORDER.

C.R.P.No.2124 of 2017 is filed by the petitioners/plaintiffs aggrieved by the order dated 27th January, 2017 in I.A.No.3171 of 2016 in O.S.No.75 of 2005, whereunder the learned Additional Senior Civil Judge, Kadapa, dismissed the petition filed by the plaintiffs under Section 45 of the Indian Evidence Act seeking to send the relinquishment deed dated 26-2-1964 along with statement in C.C.No.37 of 1998 said to contain thumb impression of one Gosula Nagamma and the disputed L.T. I. of Gosula Nagamma in Ex.B.1 Will to the expert for comparison.

C.R.P.No.2129 of 2017 is filed by the petitioners/plaintiffs aggrieved by the order dated 27th January, 2017 in I.A.No.3170 of 2016 in O.S.No.75 of 2005, whereunder the learned judge dismissed the petition filed by the petitioners under Order 16 Rule 5 C.P.C. to send for relinquishment deed dated 26-2-1964 from Sub-Registrar, Vempalli, Cudapah District to the expert.

C.R.P.No.2138 of 2017 is filed by the petitioners/plaintiffs aggrieved by the order dated 27th January, 2017 in I.A.No.3168 of 2016 in O.S.No.75 of 2005, whereunder the learned Judge dismissed the petition filed by the petitioners/plaintiff to reopen the suit.

Whereas C.R.P.No.2709 of 2017 is filed by the petitioners/plaintiffs aggrieved by the order dated 27th January, 2017 in I.A.No.3169 of 2016 in O.S.No.75 of 2005 whereunder the learned judge dismissed the petition filed by the petitioners/plaintiffs under Order 13 Rule 10 C.P.C. read with Section 151 C.P.C. to send for the record pertaining to C.C.No.37 of 1998 (Crime No.11 of 1998 of Vempalle Police Station) from the Junior Civil Judge Court, Pulivendla.

Since all the above C.R.Ps. arose out of the same suit and they are interconnected, they are being disposed of by this common order.

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

Plaintiffs filed O.S.No.75 of 2005 against the defendants seeking reliefs of declaration of title in respect of the plaint schedule property and for delivery of vacant possession of the same. The defendants filed their written statement and contested the suit.

In their written statement, defendants inter-alia contended that Gosula Nagamma executed a will dated 6-10-1998 in favour of defendant No.3 bequeathing the lands at Vempalli village in respect of her half share purchased on 13-5-1981. Plaintiffs questioned the genuineness of the will.

Be that it may, the plaintiffs after completion of trial filed the aforesaid four applications in order to prove that the will is not a genuine one. They sought to establish that Gosula Nagamma had, in

fact, not executed the will and for this purpose, they wanted to send for the relinquishment deed dated 26-2-1964 from the Sub-Registrar Office Vempalli and also the record in C.C.No.37 of 1998 (Crime No.11 of 1998 of Vempalle Police Station) from the court of the Junior Civil Judge Court, Pulivendla which said to contain the thumb impression of Gosula .Nagamma and to send those documents along with Ex.B.1 will to the expert for comparison. The respondents/defendants opposed those petitions. The trial court under impugned orders dismissed all those petitions.

The main observation of the trial court is that the petitioners/plaintiffs have not filed the documents which they sought to send for comparison along with the plaint or along with the present petitions. On this observation and following the decision of this court reported in *MIR KHAIRUDHIN v. K.SOMI REDDY AND OTHERS* ⁽¹⁾, the trial court dismissed all the four applications. Hence, the above C.R.Ps.

The point for determination is whether there are merits in the C.R.P.s to allow?

POINT:

As can be seen from the record, the plaintiffs are questioning the genuineness of the will dated 6-10-1998 said to be executed by Gosula Nagamma in favour of defendant No.3. The submission of the learned counsel for the petitioners is that the defendants have not

¹ 2006 (5) ALT 224

filed the said unregistered will into court along with their pleadings i.e., written statement and they filed the same only during the course of their evidence i.e., in the year 2016. Immediately, thereafter, the plaintiffs have taken steps and filed the aforesaid four interlocutory applications to send for record from the Sub-Registrar office and from the court of Junior civil Judge, Pulivendla, Cudapah District which contain the L.T.I of Gosula Nagamma to send along with the disputed will for comparison and therefore, the trial court was not correct in dismissing their petitions on the observation that those documents were not filed along with the plaint or the petitions.

Learned counsel would submit that the question of plaintiffs filing those documents either with the plaint or the petitions which were dismissed does not arise because those documents are part of the records in Sub-Registrar office as well as the court of Junior Civil Judge, Pulivendla. He, thus, prayed to allow the C.R.Ps.

On the other hand, the learned counsel for the respondents while supporting the impugned orders would submit that the plaintiffs ought to have taken steps to get those documents and file along with their petitions which they did not do so and on the other hand, they filed petitions only after trial was over and therefore, the trial court rightly dismissed those applications. Thus, he prays to dismiss the C.R.Ps.

On a perusal of the impugned orders, this court is of the considered view that the trial court committed error in dismissing

the applications. The documents which purported to contain the L.T.I. of Gosula .Nagamma are part of the public record i.e., one is lying in the Sub-Registrar office and another in the court. In that view of the matter, the question of the plaintiffs filing them into the court along with the plaint does not arise. It appears the defendants filed the will only during the course of the trial. Immediately, the plaintiffs have taken steps by filing the petitions to send the will to expert. In these circumstances, the plaintiffs cannot be found fault with delay.

The decision relied on by the trial court can be distinguished.

In that case, the documents which were sought to be sent for examination of expert were the subject matter of a different suit and therefore, the trial court did not incline to send them to expert. That is not the case here.

In the result, C.R.P.Nos. 2124 of 2017, 2129 of 2017, 2138 of 2017 & 2709 of 2017 are allowed and consequently, the I.A.Nos.3171 of 2016 in O.S.No.75 of 2005, 3170 of 2016 in O.S.No.75 of 2005, 3168 of 2016 in O.S.No.75 of 2005, 3169 of 2016 in O.S.No.75 of 2005 are allowed as prayed for. Having regard to the fact that the suit is of the year 2005, the trial court shall take steps to complete the entire exercise and pass the judgment on merits within a period of four months from the date of receipt of a copy of this order.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO,J

Dated 15-9-2017.

Dvs



THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO



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