

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.5614 AND 5615 OF 2012

COMMON ORDER:

These Civil Revision Petitions are filed under Article 227 of the Constitution of India, challenging the common order, dated 01-10-2012 in I.A.Nos.2686 and 2687 of 2012 in O.S.No.375 of 2006 on the file of the Chief Judge, City Civil Courts, Hyderabad.

2. Petitioner herein is the 1st defendant, respondents 1 and 2 herein are the plaintiffs and respondents 3 to 5 herein are the defendants 2, 4 and 6 in O.S.No.375 of 2006, filed for partition and separate possession of the plaint 'A' schedule property.

3. Pending suit, the petitioner herein (D1) filed the above interlocutory applications viz., I.A.No.2686 of 2012 under Section 151 CPC to reopen the suit for the purpose of summoning the original Will Deed executed by late M.Suryanarayana Murthy and I.A.No.2687 of 2012 under Order XXVI Rule 9 of CPC to appoint an Advocate Commissioner for the purpose of bringing the Original Will Deed executed by late M.Suryanarayana Murthy by collecting the keys of the premises, from the Court.

4. The trial Court after considering the material available on record, dismissed the said applications, vide impugned common order. Hence, the present revisions by the 1st defendant.

5. It is the case of the petitioner herein (D1) that initially the dispute was referred to an Arbitrator and the said Arbitrator instead of settling the dispute outside the Court, handed over the keys to the Court where the suit is

pending. The Will allegedly executed by late M.Suryanarayana Murthy was found in one of the rooms of the house in dispute when the inventory was conducted and the said Will is required for deciding the real controversy between the parties.

6. But, unfortunately, the petitioner earlier filed applications in I.A.Nos.933 to 935 of 2012 for re-opening the evidence of P.W.1 for receiving the certified copy of the Will. The said applications were resisted by the respondents and the same were dismissed by the trial Court, vide common order, dated 13-04-2012. Against the said common order, Civil Revision Petition Nos. 2555, 2556 and 2564 of 2012 were filed before this Court and the same were also dismissed by this Court, vide common order, dated 21-06-2012 observing as follows:

“As rightly observed by the lower Court, even though the suit was filed in the year 2006 and DW1 was examined as far back as June 2010, the petitioner remained quiet without making any attempt to file the registered Will till the evidence was closed and the suit was posted for arguments. What is more, it is not the pleaded case of the petitioner that the said Will is not available but that since the Will was in his parents house, he had secured a certified copy of the same. The petitioner failed to explain why he has not made any attempt to file the purported original Will stated to be lying in his parents house. This conduct of the petitioner shows that he is not diligent in filing a document, which according to him, is very crucial to his case. On a careful consideration of the facts in their entirety and the reasons assigned by the lower court for rejecting the petitioner’s application, I do not find any ground to interfere with the order passed by it.”

When the trial Court dismissed the applications for re-opening the evidence, this Court again cannot re-open the evidence of the plaintiff and appoint an Advocate Commissioner in view of order in earlier Civil Revision Petitions. When the trial Court finds no grounds to re-open the evidence and when the matter cannot be re-opened,

question of appointing an Advocate Commissioner for the purpose of producing Will does not arise.

7. In view of the orders passed by the trial Court in the earlier round of litigation for re-opening the evidence of the plaintiff and confirmed the said order by this Court in CRP Nos. 2555, 2556 and 2564 of 2012, again this Court cannot re-open the evidence of plaintiff for any specific purpose. If it is re-opened, it is nothing but reviewing the order passed by this Court in the above CRPs. Therefore, I find no grounds to interfere with the order passed by the trial Court while exercising the jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, the Civil Revision Petitions are dismissed. No order as to costs. Miscellaneous petitions, if any pending, in these revisions shall stand closed.

DATED: 27-07-2017.
Hsd

M.SATYANARAYANA MURTHY, J

