

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5592 of 2012

ORDER:

This Civil Revision Petition is filed assailing the order dated 28.09.2012, passed by the learned Additional Senior Civil Judge, Eluru in I.A.No.1324 of 2014 in O.S.No.343 of 2004, which was filed seeking to send the Original Will dated 12.02.1968 to the fingerprint expert.

2) Learned counsel for the petitioners submits that impugned order is erroneous and failed to take into consideration of the fact that the petitioner-plaintiff in I.A.No.1324 of 2012 had failed to file the rejoinder with regard to the plea taken in the written statement by the petitioners/defendant 1 to 4, basing their claim on the Will dated 12.02.1968. Further, though the Xerox copy of the Will was brought on record, as far back as in 2008, the present I.A. seeking to send the original documents to expert opinion is filed at belated stage that too at the stage of arguments. Further, learned counsel for the petitioners also by drawing attention to the counter affidavit filed in I.A., particularly at para Nos.2 and 3 would submit that the specific plea of the petitioners to summon the District Registrar, West Godavari District, Eluru, for production of the original registers showing the original Will dated 20.02.1962 executed by Thota Veeraswamy in favour of her mother late Ravuri Narasamma, 1st defendant and also in favour of late Thota Manikyam and also partition deed dated 01.03.1954 executed amongst Thota Veeraswamy and his sons to enable the handwriting expert to take out the photographs of the signatures / thumb marks that may be found on the documents before the

Court, were not considered and adverted to by the learned Additional Senior Civil Judge. It is also the contention of the learned counsel for the petitioners that the respondents have failed to produce the contemporary admitted signatures of Thota Veera Swamy in relation to the Will dated 12.02.1968. In those circumstances, learned counsel for the petitioners submits that the impugned order shall not be sustained and prays for allowing of the Civil Revision Petition.

3) Learned counsel for the respondent No.1 supports the order of the Court below and submitted that it is well considered order and the learned Additional Senior Civil Judge has taken into consideration of the necessary facts.

4) Having considered the respective submissions, it may be noted that the reliance placed by the learned counsel for the petitioners on **Yadla Venkata Subbamma and others v yadla Punnamma and Others**¹ is with respect to the effect of non-filing of rejoinder, therefore, the same does not require any consideration at this stage, as the effect of non-filing of the rejoinder is required to be considered at the time of considering the main arguments in the suit. It may be noted that the observations made by the learned Judge in **Yadla Venkata Subbamma case** (1 supra) were while disposing of the Second Appeal and while considering the questions of law raised in the said case. In those circumstances, the judgment in **Yadla Venkata Subbamma Case** (1 case) has no application to the present case on hand, which is limited to the disputed document being sent to expert opinion. So far as the non-filing of the admitted signatures is concerned, there is no such

¹ 2012 (3) ALD 88

specific plea raised before the Court below, however, in the counter affidavit filed by the petitioners themselves had virtually expressed no objection with respect to the document being sent to the expert opinion, provided certain documents, wherein the signatures of the executant of the Will viz., T. Veera Swamy are available.

5) It may also be noted that this is a case where the suit is filed for partition. Further, as noted by the Court below that the original Will was brought on record for the first time through D.W.3 by recalling him on 02.07.2012 and marked the same as Ex.B.29 on the same day. It may also be noted that the I.A. itself came to be filed on 20.04.2012, much before the marking of the said document. In the circumstances, this Court does not find any illegality in the order of the Court below and; it is for the profunder of the Will to sustain the plea; and in view of the fact that the suit is for partition of the properties, ascertainment of genuineness of the Will also would be relevant especially when there is a plea of forgery.

6) In those circumstances, this Court has seen no merits in the Civil Revision Petition and accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

7) Consequently, miscellaneous petition pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J.

Date:31.08.2017.

Ssv