

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.4448 of 2017

ORDER:

The petitioners, who are defendants in a suit for partition, have come up with the above revision petition challenging an order passed by the trial Court dismissing an application under Section 45 of the Indian Evidence Act, 1872.

2. Heard Mr. Raghavan K. Thalapaka, learned counsel for the petitioner. Mr. T.S. Anand, learned counsel takes notice for the respondents-plaintiffs.

3. The respondents filed a suit for partition. The 4th plaintiff was examined as PW.1. The petitioners herein claimed that there was a Will executed by G. Venkateswara Rao on 09-11-2003. Since the name of PW.1 was mentioned as one of the attessor to the Will, the petitioners confronted PW.1 with the Will. But PW.1 denied her signature as an attesting witness in the Will.

4. Therefore, the petitioners filed an application in I.A.No.535 of 2017 for referring the unregistered Will to a Handwriting Expert to find out whether the signature of one of the attestators was that of PW.1. But the trial Court dismissed the application forcing the defendants to come up with the above revision.

5. As rightly pointed out by the trial Court, the Will set up by the petitioners is said to have been attested by five witnesses. Two of the plaintiffs themselves are stated to be the witnesses and PW.1 was stated to be one among them.

6. Section 68 of the Indian Evidence Act, 1872 prescribes the procedure for proving a Will. If one of the attestators to the Will states that the signature found in the Will is not that of hers, there is no use establishing her signature alone in the Will by referring a document to a Handwriting Expert. Assuming that the Handwriting Expert comes to the conclusion that the signature found in the Will is that of PW.1, that does not take the case of the petitioners anywhere. The role of an attesting witness to a Will is something more than that of a mere witness to any other act. Therefore, the trial Court was rightly saying that the petitioners may have to prove the Will independently with other attesting witnesses. I find no justification to interfere with the impugned order.

Hence, the Civil Revision Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 08-09-2017

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