

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2719 of 2017

ORDER:

1) Assailing the order, dated 07.04.2017, passed in I.A.No.871 of 2016 in O.S.No.39 of 2013 on the file of the Principal Junior Civil Judge, Chittoor, wherein an application filed under Order XVI Rule 4 read with Section 151 of C.P.C., to permit the petitioner to summon the scribe K.P.Sankara Narayana, as a Court witness, was dismissed, the present Civil Revision Petition is filed.

2) The facts in issue are as under:

The respondent herein filed O.S.No.39 of 2013 seeking partition of the suit schedule property into three equal shares by metes and bounds and to allot one such share to the plaintiff by taking into consideration the good and bad qualities and put her in separate possession of her respective share. When the suit was posted for judgment, the petitioners/defendants filed an application under Order XVI Rule 4 read with Section 151 of C.P.C. to permit him to summon the scribe K.P.Sankara Narayana, as a Court witness, to give evidence in the suit.

3) A counter came to be filed opposing the same, on the ground that the said application was filed only to drag on the matter and that there are no merits in the said request as he has already re-examined the attesting witness.

4) After considering the rival submissions made by both the parties, the trial Court dismissed the said application. Challenging the same the present Civil Revision Petition is filed.

5) Learned counsel for the petitioner would submit that in order to prove that the WILL was executed on 19.02.1986 and registered on 21.02.1986, the evidence of scribe is essential. He further submits that at the time when the defendants were adducing evidence, the said scribe was not available and as such could not be produced him as a witness then. According to him, the delay is neither willful nor wanton.

6) Admittedly, the suit is posted for judgment. A perusal of the averments in the affidavit would show that the defendants intend to examine the scribe of Ex.B1, as a court witness. It is to be noted that Ex.B1 was marked through DW1 and one of the attester by name Rajagopal was examined as DW.3 wherein he deposed that at the time of execution of WILL dated 19.02.1986, he was present and attested the said WILL. The trial Court rejected the application stating that the petitioners have come up with the present petition at a very belated stage. It also stated that the petitioners did not mention the reason as to why they could not examine the said scribe till date, except stating that the said scribe was not available which was not accepted. The counter filed by the respondent/plaintiff would show that the scribe is a document writer and he was very much available at the time of defendants evidence.

7) It is to be noted that the present petition is filed to prove Ex.B1-WILL. As stated earlier, one of the attestors of the WILL was already examined as DW3 wherein he deposed about the execution of the WILL. Further, the argument of the learned counsel for the petitioner that having allowed the I.A.No.870 of 2016 in re-opening the case, the trial Court erred in dismissing the I.A.No.871 of 2016, appears to be incorrect. In order to appreciate the same, it would be useful to refer to order in I.A.No.870 of 2016, which is as under:

“Matter is re-opened, as officer is transferred.
Petition is closed accordingly.”

8) From the above, it is clear that earlier, the matter was reserved for judgment. As the officer was transferred, the matter was re-opened and then closed. It does not mean that the case was re-opened. Hence, I see no illegality or irregularity in the order passed by the trial Court.

9) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

10) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

31.08.2017
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