

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION NOS.6288, 6289, 6309

AND 6341 OF 2016

COMMON ORDER:

These four revisions are arising from the respective dismissal orders of the learned Principal Junior Civil Judge, Ramachandrapuram, East Godavari District.

The applications in I.A.Nos.564, 565, 566 and 567 of 2016 in the pending suit in O.S.No.90 of 2011 respectively were dismissed on 08.12.2016. The petitioners are the defendants 1 and 5. The respondents to the respective petitions are the plaintiff and other defendants 2 to 4.

The suit is filed for declaration of legal status as the plaintiff is the heir of the deceased. The contest of the defendants is that the first defendant is the adopted son of the deceased and the deceased also executed a Gift Deed and plaintiff is not entitled to estate of the deceased even died intestate by virtue of the adoption being legal heir and plaintiff is not entitled to the reliefs.

It appears said registered Gift Deed is exhibited as Ex.B4 and the registered adoption deed as Ex.B1. There appears denial of the execution of the Gift Deed and adoption deed. Even though the adoption document is not a compulsory attestable document, that gives presumption from registration otherwise. Once there is a specific denial of the execution of the Gift deed concerned being a compulsory

attestable document, the proof of it is as contemplated by Section 68 of the Indian Evidence Act.

Here among the four applications, one is to reopen the case. The matter is still pending at the stage by posted for arguments. It is upon a formal closing of the evidence reopen petition not required and otherwise it can be allowed. Coming to the receiving of the additional document and recall of any witness for its marking, it is only the no objection certificate stated to have been issued by the third respondent, Tahsildar concerned, it has no legal sanctity, that too when the claim is based on registered adoption deed and so called Gift Deed for the properties. Accordingly, there is nothing to interfere with the orders in I.A.No.565 and 567 of 2016 but for to allow I.A.No.564 of 2016. Coming to other petition, it is to examine a witness as D.W.5 none other than one of the two attestors of the Gift Deed. Once there is a specific denial of the Gift, it requires proof as contemplated by Section 68 of the Evidence act as referred supra and the defendants are though supposed to examine the witness before closure of their evidence, which they stated could not and same is since necessary to examine, the dismissal order of the lower Court is to be set aside and the petition is to be allowed subject to costs of Rs.3,000/- (Rupees three thousand only) payable by the defendants 1 and 5 to the plaintiff before the lower Court within one week from the date of receipt of the copy of this

order and to secure said witness on the dates being fixed by the trial Court for his examination as D.W.5.

Accordingly, I.A.Nos.566 and 567 of 2016 are dismissed and I.A.Nos.564 and 566 of 2016 are allowed with costs by reopening and by permitting to examine the defence witness. Miscellaneous petitions, if any, pending shall stand closed.

(Dr. B.SIVA SANKARA RAO, J)

1st November 2017
RRB

