

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.3697, 3893 AND 4049 OF 2012

COMMON ORDER:

All the Revision Petitions are maintained by the 1st defendant viz., D.Y.K. Mohan, in O.S. No.104 of 1995 on the file of the I Additional Senior Civil Judge, Vijayawada. This is a suit for possession filed by the sole plaintiff M.Ganga Ratnam. In the suit, there are 7 defendants viz, defendants 5 to 7 are the plaintiff's predeceased son's wife and children, and defendants 2 to 4 are the plaintiff's other three children. The contest of the 1st defendant is that he is an agreement holder from the husband of the sole plaintiff. The plaintiff died pending suit and I.A. Nos.540 and 541 of 2011, under Section 5 of the Limitation Act, 1963 and Order XXII Rule 9 and 4 C.P.C., are filed to condone the delay and to set-aside the abatement to implead the legal heirs of the sole plaintiff since died. These applications filed by the 2nd defendant viz., M. Venkata Satyanarayana Rao to bring him as legal representative of his late mother by claiming through a will said to have been executed by his late mother died testate, by excluding the other legal heirs defendants 3 to 7 of the suit. In the said I.A. No.539 of 2011 where he sought for transposing him by adding as legal representative as 2nd plaintiff from 2nd defendant; consequently, the 1st defendant filed a memo in seeking to cross-examine the deponent 2nd defendant. That memo is rejected against which one Revision filed and there is a direction to file counters in the other two applications in I.A. Nos.540 and 541 of 2011 and against that direction the other two Revisions are filed. It is therefrom the suit proceedings of O.S. No.104 of 1995 are practically stalled.

Undisputedly, if at all, a witness deponent or a party deponent in an Interlocutory Application to be cross-examined, there must be an

application required as contemplated by Order XIX Rules 1 and 2 of C.P.C.; there is no such application filed, and a memo cannot be considered without such application, that too to decide on merits about any necessity to permit or not. Thereby, there is nothing to interfere with the said rejection of memo by sitting in Revision against that impugned order on the rejection memo in the pending I.A. No.539 of 2011 covered by C.R.P. No.3697 of 2012. So far as the other matters in direction to file counters, there is no wrong; thereby, there is also nothing to interfere by sitting in Revision; against that direction in the pending I.A. Nos.540 and 541 of 2011 by the trial Court to entertain the Revisions 3893 and 4049 of 2012. However, whether it is the sole plaintiff's death testate or intestate a dispute *inter-se* between the defendants 2 to 7 and whatever the 1st defendant in opposing the suit for delivery of possession mainly with contest that he already filed suit for specific performance of said contract for sale executed by husband of the sole plaintiff in his favour in O.S. No.260 of 1994 only for the interest of the plaintiff, if any, among the legal heirs of late husband died intestate to submit to the relief of specific performance or not but for that there is no need for the 1st defendant specifically to decide by adjudication of the claim regarding the so called will said to have been executed by the sole plaintiff in favour of the 2nd defendant but for *inter-se* dispute between the defendants 2 to 7. In fact, this suit for possession is practically thereby between the 1st defendant and the late plaintiff's legal heirs all to be transposed unless 2nd defendant proves the will as contemplated by Section 63 of the Indian Succession Act, 1925; wherein, the 1st defendant also got a stake to oppose the will if at all but for that there is nothing to entertain these Revisions. Thereby, all the Revisions are closed to pursue their remedies before the trial Court.

It is needless to say but for adjudication of the so called will set-up by 2nd defendant from the defendants 2 to 7 as legal representatives on record of the sole plaintiff even in the capacity as defendants. Question of filing application under Section 5 of the Limitation Act or setting-aside the abatement under Order XXII Rule 9 C.P.C. does not arise, thereby, there is nothing to adjudicate the I.A. Nos.540 and 541 of 2012. Accordingly, those Revision Petitions are closed for the trial Court only to adjudicate the *lis* covered by I.A. No.539 of 2012 while for transposing whether 2nd defendant or all the other defendants as plaintiffs *vide* decision of this Court in ***Ashifaquiddin and others Vs. Mohd. Azizuddin and others***¹.

The trial Court shall make every endeavour for early disposal of the I.A. No.539 of 2011. If the suit for specific performance is also in the same Court, the learned trial Judge shall conduct joint trial, as the whole contest of 1st defendant in opposing the suit for possession is depending upon his entitlement to the relief for specific performance or not to record the evidence in the Suit for specific performance.

As a sequel, miscellaneous petitions, if any, pending in these Revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.12.2017.
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¹ AIR 1978 AP 354

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