

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2404 OF 2017

O R D E R

The petitioner in this civil revision petition under Article 227 of the Constitution is the plaintiff in O.S.No.178 of 2013 on the file of the learned Special Sessions Judge for trial of cases under the SCs & STs (POA) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. She filed I.A.No.751 of 2016 in the said suit under Order 16 Rules 6 and 7 CPC to summon the Sub-Registrar, Ibrahimpatnam, Ranga Reddy District, for production of the record containing the true extract of the registered gift settlement deed bearing Document No.174/1976 dated 07.04.1976 along with the Thumb Impression Register, containing the signatures and thumb impressions of the executants of the said gift settlement deed, and to give evidence as to execution of the said gift settlement deed. By order dated 20.02.2017, the trial Court dismissed the said I.A. Aggrieved thereby, the plaintiff is before this Court.

Heard Sri P.S.P.Suresh Kumar, learned counsel for the petitioner/plaintiff, and Sri N.Naveen Kumar, learned counsel for the respondents/defendants.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.178 of 2013 was filed by the plaintiff seeking:

- (1) a declaration that she was the owner of the suit A, B and C schedule lands;
- (2) eviction of defendants 1, 6, 7 and 8 from the suit A schedule land, eviction of defendant 2 from suit B schedule land and eviction of defendants 3 to 5 from the suit C schedule land to and put her in possession thereof; and

- (3) a declaration that various registered sale deeds and gift settlement deeds on the rolls of the Sub-Registrar, Maheshwaram, Ranga Reddy District, were null and void and not binding on her and for costs.

The plaintiff filed the subject I.A. in the suit claiming that she acquired the suit schedule lands under the registered gift settlement deed bearing Document No.174/1976 dated 07.04.1976. She filed a certified copy thereof before the Court which was marked in evidence as Ex.A1. However, the original of the said document, according to her, was in the custody of the defendants. She stated that Abdul Ghani and Md.Kareemuddin were the attestors of Ex.A1, but upon her enquiry, she came to know that Abdul Ghani died and his sons had settled abroad and were not available. She further stated that she could not find out the whereabouts of the other attestor, Md. Kareemuddin, in spite of her best efforts. As the record in respect of Ex.A1 was with the Sub-Registrar, Ibrahimpatnam, she claimed that she would have to examine him to prove the execution of Ex.A1. She further claimed that it was essential to summon the Sub-Registrar, Ibrahimpatnam, Ranga Reddy District, to produce the record, including the Thumb Impression Register, so that he could also give evidence in respect of execution of Ex.A1. This was the basis for her application under Order 16 Rules 6 and 7 CPC.

The defendants contested the I.A. stating, in their counter, that they had denied the claim of the plaintiff that she acquired the suit schedule lands under Ex.A1 gift settlement deed. They further stated that the executants of the said document were no more and that the plaintiff was trying to fill up the lacuna which came to light in her cross-examination as P.W.1, by filing this application.

Perusal of the order under revision reflects that the trial Court was of the opinion that the burden lay upon the plaintiff to prove her case and even if the Sub-Registrar, Ibrahimpatnam, was summoned, it was not sufficient proof of the document. The I.A. was accordingly dismissed.

Sri P.S.P.Suresh Kumar, learned counsel, would contend that as one of the attestors of the said document was no more and the whereabouts of the other attestor were unknown, the plaintiff has no option but to look for other means of proving Ex.A1, and production of the record relating thereto from the office of the registration authorities would be of assistance in this regard.

He would place reliance upon **CHAKKA KRISHNA PRASAD V/s. KOTHA APPA RAO**¹, wherein this Court observed that parties to a suit are at liberty to adduce oral and documentary evidence as per their choice in order to substantiate their case and the question of relevancy or validity of the documents, after they were tendered in evidence, should be considered by the Court in accordance with law. This Court cautioned that before a document is summoned from the custody of any office, the Court cannot embark upon scrutiny and consideration of the legality or relevancy of the document. Learned counsel would also place reliance upon **PENMATSA PADMA V/s. INDUKURI SEETAMMA**², wherein this Court observed that merely because a certified copy had been marked may not be a ground to deny an opportunity to the party to summon the original Will, as it may be that the original may have to be looked into while deciding or appreciating the validity or otherwise of the said Will.

¹ 1998 (2) ALT 45

² 2006 (5) ALD 832

Per contra, Sri N.Naveen Kumar, learned counsel, would contend that summoning of the original of the registered gift settlement deed would serve no purpose as secondary evidence thereof, being the certified copy, was already marked as Ex.A.1. He would submit that production of the original by the registration authorities would not, in any way, further the case of the plaintiff and the order passed by the trial Court was fully justified and valid.

Order 16 Rule 6 CPC authorizes the Court to summon any person to produce a document without being summoned to give evidence. Order 16 Rule 7 CPC, on the other hand, mandates that any person present in Court should give evidence, if required by the Court, or to produce any document then and there in his possession or power. The discretion vesting in the Court under these provisions would have to be exercised judiciously. In the event, production of the document in question or the evidence given by the person who is summoned to produce such a document *prima facie* advances the case of the party seeking such relief, the Court would be justified in exercising its discretion in favour of such party. Though the relevancy of the document sought to be summoned may not be examined by the Court at this stage, it is not as if the Court has no discretion in the matter and must mechanically allow summoning of documents without application of mind. Frivolous or misconceived applications filed by a party in this regard need not be accepted by the Court.

In the present case, the certified copy of the document in question has already been marked in evidence as Ex.A.1. This copy was certified to be a true copy by none other than the registration authorities themselves. That being so, asking the Sub-Registrar, Ibrahimpatnam, Ranga Reddy District, to produce the original of the

very same document available in their custody along with the Thumb Impression Register does not improve the case of the plaintiff. Further, as Sub-Registrars are not posted permanently and as the Sub-Registrar, who was available at the time of execution of Ex.A.1 in the year 1976, would not, in all probability, be available now, the present incumbent would not be in a position to speak of the execution of the said document from his own knowledge. He would, at best, refer to the record and state the contents thereof.

It is for the plaintiff to prove the document in question in accordance with law if she wishes to rely upon it. Her endeavour to seek production of the original of the said document from the custody of the registration authorities along with their record does not, in the opinion of this Court, help her. Her application was therefore utterly misconceived. The trial Court rightly opined so and dismissed the I.A. This Court therefore finds no error in the order under revision warranting interference.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

SANJAY KUMAR, J

8th SEPTEMBER, 2017

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