

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition Nos.6041 & 6128 of 2016

COMMON ORDER:

Both the CRPs. 6041 and 6128 of 2016 are filed by the petitioner/defendant against the common order dated 13.07.2016 in I.A.Nos.259 and 267 of 2016 in O.S.No.531 of 2012 respectively on the file of Principal Junior Civil Judge, Kadapa.

Since both the CRPs are inter connected, they are disposed of by this common order.

2a) I.A.No.259 of 2016 was filed by respondent/plaintiff under Sections 45 and 71 of Indian Evidence Act to send the petition schedule documents i.e. disputed signature of deceased Katta Penchalam on the Will dated 30.06.2000 and her admitted signatures to the expert for comparison. I.A.No.267 of 2016 was filed by the same plaintiff to reopen the suit.

b) Plaintiff—Devasthanam filed suit—O.S.No.531 of 2012 for eviction and also for recovery of arrears of rent claiming that suit schedule property was their property. The plea of the plaintiff is that earlier plaintiff filed I.A.No.83 of 2016 for two prayers in same application one for reopening the suit and another for sending the documents to the handwriting expert which was dismissed. Hence, the present petitions.

c) The defendant opposed the same claiming that suit property is her absolute property by virtue of Will dated 30.06.2000 said to have been executed by late Katta Panchalamma in her favour. She contended that the petitions are filed at the belated stage when the suit is coming up for arguments. It is further contended that earlier plaintiff—Devasthanam filed I.A.No.83 of 2016 containing two prayers, one for reopening of the suit and another for sending the documents to the handwriting expert which was dismissed by the trial Court. Hence, the present petitions which are filed at the belated stage and for the very same relief, are not maintainable.

d) The trial Court considering the evidence both oral and documentary observed that petitions cannot be dismissed merely on the ground of delay and that real dispute is with regard to execution of Will by Katta Panchalamma which can be decided in the main suit and accordingly, allowed both the petitions.

Hence, the instant CRPs.

3) Heard arguments of Sri M.N.Narasimha Reddy, learned counsel for petitioner and Sri K.Sudershan Reddy, learned senior counsel for respondent.

4) Impugning the orders, learned counsel for petitioner would submit that the trial Court erred in allowing the petitions in spite of making categorical observation that petitions were filed at the belated

stage when the matter came up for arguments. He thus argued that the trial Court ought to have dismissed the petitions. He further argued earlier the respondent/plaintiff filed I.A.No.83 of 2016 seeking the same reliefs as in the present petitions, but not pressed. Hence, dismissal order in I.A.No.83 of 2016 would operate as *res judicata* against the petitions in the impugned order. He thus prayed to allow the CRPs.

5) In oppugnation, learned senior counsel appearing for respondent/plaintiff would argue that in the suit, the validity of the Will allegedly executed by Katta Penchamma is the prime question and the petitioner/plaintiff can challenge the Will only by referring it to the expert and considering the same, the trial Court rightly allowed the petitions by compensating the delay by awarding costs and hence, it is not correct to contend that delay vitiated the impugned orders.

a) Nextly, he would contend that earlier petition I.A.No.83 of 2016 was not pressed for the technical reason that two prayers i.e. for reopening of the suit and for sending the Will and admitted signatures to the expert were made in one petition and thereafter, two separate petitions i.e. I.A.No.259 and 267 of 2016 were filed and they were allowed. Since I.A.No.83 of 2016 was dismissed due to not pressing of the petition, the same will not operate as *res judicata*, as the earlier petition was not decided on merits. He thus prayed to dismiss the revision petitions.

6) In the light of above arguments, the point for determination in these CRPs. is:

“Whether there are merits in the CRPs. to allow?”

7) **POINT**: As can be seen from the respective contentions, the genuinity of the Will dated 30.06.2000 allegedly executed by original owner Katta Penchamma in favour of the defendant is one of the prima issues in the suit. As such, the trial Court allowed the two petitions I.A.No.259 and 267 of 2016 though they were filed at a belated stage of course, by imposing costs on the plaintiff. In that view of the matter, the impugned orders cannot be found fault.

8) So far as the other contention of the revision petitioner is concerned, it is true that earlier the respondent/plaintiff filed I.A.No.83 of 2016 making two prayers i.e. for reopening of the suit and for sending the documents to the handwriting expert. Since two prayers were made in the same petition, it appears that respondent/plaintiff not pressed the said petition on technical ground and thereafter filed two separate applications i.e. I.A.No.259 and 267 of 2016 making separate prayers. In that view of the matter, petitioner cannot take objection that the present petitions were barred. It should be noted that Court shall do substantial justice and technicality, which will not vitiate the proceedings, should not come in the way. There are no merits in the CRPs.

9) In the result, the CRPs. are dismissed by confirming the impugned orders passed by the trial Court. No costs.

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

U. DURGA PRASAD RAO, J

Date: 08.06.2017
Murthy

