

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.4522, 4553 & 4749 of 2016

COMMON ORDER:

These civil revision petitions are filed against the orders dated 26.07.2016 passed in I.A.Nos.77, 78 and 79 of 2014 in O.S.No.14 of 2004 on the file of IV Additional District Judge, Tirupathi, wherein the I.As. filed seeking to send for the service register in original of the deceased Sri P.V.Gurava Reddy and the original Will dated 18.05.1963 alleged to have been executed by said Gurava Reddy, to a handwriting and a finger prints expert for opinion, were dismissed.

The main ground urged by the learned counsel for the petitioners is that the Will dated 18.05.1963 is bogus one and that Sri.P.V.Gurava Reddy executed his last Will on 22.02.1963, bequeathing the suit schedule property in favour of the municipality for establishment of a school, as he happens to be a teacher. Since the suit was for a declaration of injunction, production of the above said documents are essential for a just decision of case. It is his case that the said Will dated 22.02.1963, is genuine and there is no other Will executed by him thereafter. Hence, he submits that Will dated 18.05.1963 produced by the defendants as last Will of said P.V.Gurava Reddy is a bogus and fabricated one. It is his case that the said Gurava Reddy passed away after executing Will dated 22.02.1963. In view of the above, he submits that the order under challenge

requires reconsideration. On the other hand, learned counsel appearing for the respondents submits that on more than one occasion, the trial Court observed that the Will dated 22.02.1963 is a bogus one. He took this Court through the order passed in L.P.A.Nos.201 and 208 of 1980 to show that the Will dated 22.02.1963 is a fabricated one. In any event, he submits that since arguments are in progress, the order under challenge warrants no interference by this Court.

Though various contentions are raised before the trial Court, the Interlocutory Applications came to be rejected on the ground that the procedure required for establishing the Will has not been followed. Section 68 of the Indian Evidence Act provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness has been called for the purpose of proving its execution, if an attesting witness is alive, and subject to the process of the Court and capable of giving evidence. Section 69 of the Indian Evidence Act provides that if no such attesting witness is found, it must be proved that the attestation of one attesting witness at least is in the handwriting, and that the signature of the person executing the document is in the handwriting of that person.

From a reading of the above submissions, it is clear that the petitioners intends to send the service register of P.V.Gurava Reddy including Will dated 18.05.1963 to the hand writing expert for comparison of the signature on the Will dated 18.05.1963. Even if said report is called for, it cannot be treated as substantive

piece of evidence and it can be used as a corroborative document. In order to establish the Will as genuine or that it has been executed in favour of plaintiffs, at least one attester should have been examined to prove or disprove the execution of Will. The specific procedure which has been contemplated under the Act was not followed. Even otherwise, it is to be noted that the Municipality in their counter filed order in L.P.A.Nos.201 and 208 of 1980, wherein it has categorically held that the Will dated 22.02.1963 executed by P.V.Gurava Reddy is fabricated one.

Having regard to the above, I see no reason to interfere with the findings of the trial Court. The trial Court is directed to proceed with the main suit uninfluenced by the observations, if any made in this order.

Accordingly, the Civil Revision Petitions are dismissed. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.02.2017
vhb