

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition Nos.3971 and 4139 of 2016

Common Order:

The 1st plaintiff in a suit for partition and possession has come up with these revisions, challenging two orders passed by the Trial Court, reopening the evidence on the side of the defendants by one order and recalling D.W.3 for further examination by another order.

2. Heard Mr. Sivalenka Ramachandra Prasad, learned counsel for the petitioner and Mr. Venkateswarlu Chakkilam, learned counsel appearing for the 1st respondent.

3. The petitioner herein, along with his brothers and sisters filed a suit for partition and possession. The 1st defendant in the suit is the father of the plaintiffs. According to the plaintiffs, the 2nd defendant in the suit had illicit intimacy with the 1st defendant and got a property gifted by the 1st defendant in her favour on 28-3-2003. Thereafter, the said property was alienated partly in favour of other defendants, one of whom was the 5th defendant.

4. In the course of trial, the 2nd defendant was examined as D.W.1. The 5th defendant who purchased portion of the property was examined as D.W.3.

5. After trial was over, the 2nd defendant came up with two applications, one for reopening the evidence on the side of the defendants and another for recalling D.W.3 to confront him with his attesting signature in the gift deed executed by

the 1st defendant in favour of the 2nd defendant. Both these applications were allowed by the Trial Court forcing the 1st plaintiff to come with the present revisions.

6. Unfortunately, one important aspect has been omitted to be taken note of, by the Trial Court. The 5th defendant who was examined as D.W.3, is an alienee from the 2nd defendant. Both of them are on the same side, without any conflicting interest against each other. The 5th defendant examined himself as D.W.3 to protect his own right. Therefore, he was cross-examined by the plaintiff. The 5th defendant examined as D.W.3 did not come up with any application for reopen and recall on the ground that he had to establish the gift deed in favour of his vendor to sustain his purchase. Therefore, the 2nd defendant cannot now seek to recall D.W.3.

7. Suppose the applications are allowed, we do not know whether the 2nd defendant would examine D.W.3 in chief or in cross. The confrontation of the 2nd defendant by D.W.3 will not fall under either of the two categories. Therefore, the orders of the Court below are not sustainable. Hence, the revisions are allowed and the impugned orders are set aside. The miscellaneous petitions, if any, pending in these revisions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

07th April, 2017.
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