

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4425 OF 2011

and

CIVIL REVISION PETITION No.4215 of 2011

COMMON ORDER:

These Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging the common order dated 05.07.2011 passed in I.A.Nos.596 of 2011 and 597 of 2011 in O.S.No.62 of 1996 on the file of the Court of the Senior Civil Judge, Tanuku.

2. The contention of the learned counsel for the petitioner is two fold: (1) the trial Court ought not to have permitted the first respondent to adduce secondary evidence; and (2) the order passed by the trial Court is not sustainable either on facts or in law.

3. *Per contra*, the learned counsel for the first respondent submitted that the trial Court has considered the scope of Sections 63 to 66 of the Indian Evidence Act, 1872 and allowed the petitions. He further submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. A perusal of the record reveals that the petitioner herein filed O.S.No.62 of 1996 on the file of the Court of the Senior Civil Judge, Tanuku, against the respondents herein for partition and separate possession of the suit schedule property. After completion of the plaintiff's side evidence, DWs.1 to 3 were examined. It is the case of the first respondent that the petitioner herein and the respondents have entered into a settlement in the presence of

elders and the same was reduced into writing on 19.11.1994 and the said document is in the custody of Chittala Swamy Naidu. During pendency of the suit, the first respondent herein filed I.A.No.1400 of 1996 to issue summons to the said Swamy Naidu to cause production of the original letter dated 19.11.1994 and the said I.A. was allowed. The said Swamy Naidu appeared before the Court and stated the letter dated 19.11.1994 was not in his custody. It is the duty of the first respondent to establish the existence of letter dated 19.11.1994, which was not in his custody. In the plaint, the petitioner herein has taken a specific plea that the respondents herein have obtained his signatures on different documents on 19.11.1994. The first respondent, who is the first defendant, has taken a specific plea in his written statement that the petitioner herein executed the letter dated 19.11.1994. A perusal of the plaint and written statement *prima facie* reveals the existence of the letter dated 19.11.1994. Chittala Swamy Naidu is none other than the own brother-in-law of the petitioner/plaintiff. In view of relationship between the petitioner and Chittala Swamy Naidu, there is every possibility for non-production of letter dated 19.11.1994 by Swamy Naidu. A person, who seeks the permission of the Court to adduce secondary evidence, has to satisfy the ingredients of Sections 63 to 66 of the Indian Evidence Act. In the instant case, the first respondent meticulously followed the procedure as contemplated under Sections 63 to 66 of the Indian Evidence Act. The trial Court has considered the factual and legal aspects in right perspective and allowed the petitions. The order passed by the trial Court is supported by the material available on record. The trial Court has assigned reasons much less cogent

and valid reasons while allowing the petitions. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court by exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the revisions lack merits and *bona fides*.

5. Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs.

6. Consequently, Miscellaneous Petitions, if any, pending in both the Civil Revision Petitions shall stand closed.

Date: 30.01.2017
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T.SUNIL CHOWDARY, J

