

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.5764 of 2017

ORDER:

1) Aggrieved by the order dated 29.06.2017, passed in I.A.No.673 of 2015 in O.S.No.143 of 2008 on the file of the Junior Civil Judge, Razole, wherein an application filed under Section 45 of the Evidence Act to send the Will dated 27.01.2002 to handwriting expert along with contemporary signatures for his opinion was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The first respondent herein filed O.S.No.143 of 2008 seeking permanent injunction restraining the defendants, their men, their followers, their successors and henchmen from ever interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property in any manner. When the suit is posted for the evidence of defendant No.3, she filed the present application to send Ex.A8-Will dated 27.01.2002 to handwriting expert along with contemporary signatures for his opinion.

3) A counter came to be filed by the plaintiff contending that at the fag end of trial the present application came to be filed only to drag on the proceedings.

4) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same, the present Civil Revision Petition is filed.

5) The main ground urged by the learned counsel for the petitioner is that in the written statement itself the petitioner stated that the said will was forged by the plaintiff and as such, the application of this nature should have been filed at the earliest point of time.

6) As seen from the record, after completion of trial and when the suit is posted for the evidence of defendant No.3, the present application came to be filed for sending the Ex.A8-Will, to an expert for his opinion. It is to be noted here that in the written statement filed by defendant No.3 it has been specifically mentioned as under:

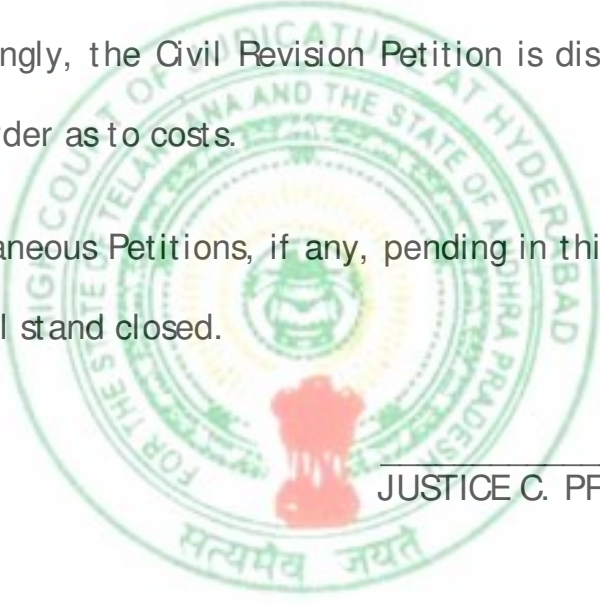
“5. It is true the 1st defendant is brother and 2nd defendant is sister of the deceased Abraham. During the life time of the Abraham did not executed any testamentary document to any body. The late Abraham was died intestate all his properties leaving behind to his legal heirs ie. His two children and his wife. The plaintiff filed this suit against the defendants with malicious intention by creating Will and forged the signatures of the attesters and deceased Abraham.”

7) It is also to be noted here that the written statement was filed on 25.11.2008, denying the execution of Will by the petitioner herein. No steps for sending the said document ie. Will

to the handwriting expert, was taken at an earlier point of time. No reasons are given as to why necessary measures were not taken in the year 2008, when the written statement was filed disputing the execution of Will. Therefore, filing of the present application at the belated stage more so when recording of evidence on the defendant's side is almost complete, cannot be entertained. The genuinity or otherwise of the document will be taken into consideration by the trial Court while appreciating the evidence on record.

8) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

9) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

29.12.2017
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