

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5621 of 2017

ORDER:

The revision petitioners are plaintiff Nos.1, 3 & 4. The revision 1st respondent is the 1st defendant. The revision other respondents are among the other defendants and the 2nd plaintiff on record including the legal representatives of some of the parties.

The suit is filed for partition of plaint schedule property consisting of plaint A to F schedule properties into 21 shares and to allot one such share sought by the plaintiffs, each to the 4 plaintiffs (4/21st) in A schedule and item Nos.2 to 4 of B schedule and E-schedule and further 8/21 share in item No.1-B schedule and 4/14th share in C schedule and 4/7th share in F schedule and for costs and other reliefs. The 1st defendant is none other than the father of plaintiff Nos.1 to 4 and defendant Nos.2 & 3 by name Mahesh Chand. The said 1st defendant filed I.A.No.1375 of 2017 in the pending suit 24/2005 (old 32/2003) on the file of IX Additional Chief Judge, City Civil Court, Hyderabad. It is a petition under Order VIII Rule 1-A (3) r/w 151 CPC to receive the certified copy of registered will dated 23.03.2012. The 1st plaintiff and respondent Nos.12 to 14 among the parties to the suit in the application objected for receiving the document. Their contention is that the question of exhibiting the will in the lifetime of the executant, for it will not come into operation in his lifetime does not arise apart from same no way relevant for the purpose of the suit leave about admissibility even. The order of the lower court is by allowing application covered by the impugned order dated

11.08.2017 with observation that any objection regarding to the proof, relevancy and admissibility can be decided as held by the Apex Court in **Bipin Shantilal Panchal Vs. State of Gujarat**¹ and thereby there is nothing to object for receiving the so called certified copy of registered will dated 23.03.2012, said to have been executed by petitioner/1st defendant bequeathing in favour of 15th respondent to the petition for exhibiting the same as secondary evidence through DW.4. It is the same impugned herein.

The counsel for revision petitioners reiterated their contentions before the lower Court and impugned the order of the lower Court as unsustainable and outcome of non-application of mind. Whereas the learned counsel for the respondents contended that the order no way requires interference including from the expressions referred by the lower Court of **Bipin Shantilal Panchal supra** and apart from that once the person who executed the document wants to say from the certified copy as executed it can be received and makes no difference of the document is primary or secondary evidence by referring to a single Judge expression of Erstwhile AP High Court at Guntur in **Goduguneesi Padmanabhachari Vs. Annamraju Sithapathirao and Others**² and also placed reliance on the expression of the Apex Court in **Rajendra Prasad Gupta Vs. Prakash Chandra Mishra and Others**³ that once rules of procedure are handmaid of justice, Section 151 CPC gives inherent powers to the Court to do justice and the provision has to be interpreted to mean every

¹ AIR 2001 SC 1158

² 1954 (2) MLF 75

³ AIR 2011 SC 1137

procedure is permitted to the Court for doing justice unless expressly prohibited and not that every procedure is prohibited unless expressly permitted.

Heard both sides as referred supra and perused the material on record.

Leave about a will speaks from the grave of the executant testator only after his death and in the meantime he got every right to cancel at any stage or alter the bequeaths by execution of any codicil. The share of the 1st defendant out of the plaint schedule property what he got is only germane for the purpose of suit for partition and not after his death how he can dispose of to give effect after his death or at any time later in his lifetime. Thus though any objection as to proof, admissibility and relevancy can be considered while exhibiting the document and not for receiving as rightly observed by the lower Court including from the expression in **Bipin Shantilal Panchal** supra, there is nothing to interfere with the order of the Court in receiving the document, leave about even from certified copy of the registered will he can say he executed the original to give effect after his lifetime; but for to say when the document is not at all relevant for the purpose of lis and it is the duty of the Court in considering the admissibility and relevancy as per Section 136 of the Evidence Act; the Court cannot forget if at all sought for exhibiting the document of the fact that it is not relevant and once it is not relevant, question of exhibiting does not arise. Any say by him of he executed the will in his application itself is borne by record to leave it about any relevancy or otherwise of the same in any future lis.

With the observations, the civil revision petition is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 15.12.2017
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