

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.6335 OF 2017

ORDER ::

This civil revision petition is filed against the order dated 17-10-2017 passed in IA No.978 of 2017 in OS No.53 of 2013 by the II Addl. District Judge, Eluru, dismissing the said application filed under Section 45 of the Evidence Act, 1872, filed by the revision petitioner herein, who is plaintiff in the suit.

2. The plaintiff filed the suit for partition of joint family properties into 3 equal shares and delivery of one such share to her. The plaintiff's case is that the Will dated 05-12-2001 said to have been executed by her father, late Basavaiah was fabricated by her brother with the help of scribe, attestors and advocate notary by forging the signature of his late father on it, marked as Ex.C1. In the background of these averments, the plaintiff filed the instant interlocutory application to send the said Will dated 05-12-2001 (Ex.C1), to handwriting expert for his opinion, after comparison with the admitted signature with that of the disputed signature on the Will. By the impugned order, the Court below dismissed the application on

the ground that the plaintiff is a signatory to the sale deed Ex.B-1, executed by her and her brother, wherein she admitted about the execution of Will dated 05-12-2001 by her late father and she also did not file any rejoinder, disputing the Will dated 05-12-2001, after filing of written statement by the defendants stating that the plaintiff has knowledge of execution of Will dated 05-12-2001 by her late father.

3. Heard the learned counsel for the petitioner. Perused the impugned order.

4. Learned counsel for the petitioner submits that non filing of re-joinder rebutting the averment in the written statement as to the execution of Will dated 05-12-2001 is not fatal to the case of the petitioner and still the Court below ought to have considered the application of the petitioner, to advance the cause of justice.

5. It is to be seen that in Ex.B-1 sale deed, to which the petitioner is admittedly a party along with her brother, in her cross examination, to a suggestion made, admitted that a mention as to the execution of the Will dated 05-12-2001 was

made in Ex.B1. The suit is of the year 2013 and the written statement in the case was filed on 15-07-2013. The pleading that the petitioner has knowledge of the execution of the Will dated 05-12-2001 remained un-controverted till the petitioner filed the instant interlocutory application in the year 2017, which itself indicates that the petitioner was not serious enough about the allegation that the Will dated 05-12-2001 is a forged one. The Court below considered all these aspects of the matter and dismissed the application. The order passed is a discretionary order and it is settled proposition of law, interference with the exercise of discretion by the Court below, normally cannot be resorted to, unless the order is shown to be arbitrary or capricious. The order passed by the Court below does not suffer from any illegality or irregularity. In the circumstances, the civil revision petition fails and it is accordingly dismissed. Miscellaneous petitions, if any pending in this case shall also stand dismissed There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 30-11-2017
NRG

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