

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1403 OF 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the order dated 24.11.2017 in I.A. No.163 of 2016 in O.S. No.195 of 2011 passed by the XXVII Additional Chief Judge, City Civil Court, Secunderabad, whereby the learned Additional Chief Judge dismissed the application filed under Section 45 of the Indian Evidence Act, 1872.

The case of the petitioners is that they filed a suit for partition of schedule property claiming that the schedule property is ancestral property of petitioners and defendants 1 to 8, but the defendants 1, 2, 7 and 8 set up a gift settlement deed vide document bearing No. 560/95 registered in BK.I Vol.1448 at page 360 to 369. The petitioners filed the petition after four years of filing written arguments claiming that they obtained certain documents in the year 2016, under Right to Information Act relating to the purchase of the said house by late Mary Abednego/donor, for comparison of the admitted signature of the donor with the disputed signature on the Photostat copy of gift deed, and on comparison, the signature of the donor on the documents obtained under RTI is different from the Photostat copy of gift deed produced by the defendants, hence filed the petition at belated stage. The said gift deed is a forged document and thereby the defendant 7 and 8 are not entitled to claim exclusive right over the alleged gift deed and prayed to refer the signatures of the donor on registered gift deed bearing No.560/95 registered in BK.I Vol.1448 at page 360 to 369 along with admitted signatures for comparison and opinion.

The respondents 7 and 8 filed counter denying the material allegations *inter alia* contended that the said gift deed is true and valid and the donee under the gift deed enjoyed the property till she expires on 30.04.1999 and the rights of donee were not challenged during her life time. Therefore, the property is separate property of Mary vasantha/ donee. At this stage, the documents cannot be disputed and the signature on the gift deed cannot be referred to the expert for comparison with the admitted signatures and prayed to dismiss the petition.

Upon hearing argument of both the counsel, the court below dismissed the petition and declined to refer the disputed signatures on the Photostat copy of the gift deed along with the admitted signatures on the ground that the original gift deed dated 09.02.1995 vide document No.560/1995 is not on record and a handwriting expert cannot compare a Xerox copy or certified copy of the gift deed treating it as original, to issue report.

Aggrieved thereby, the present revision is filed on the ground it came to the light only after obtaining copy of documents relating to the purchase of the said house by late Mary Abednego/ donor, under the Right to Information Act, till then no document is available with the petitioners to refer the disputed signature on the gift deed along with the admitted signature of the donor and thereby the order is erroneous on the face of record and prayed to set aside the order.

During hearing, learned counsel for the petitioner contended that he did not file any rejoinder, but still he is entitled to question the same, and when the court below committed an error in passing the order, this Court can exercise the jurisdiction vested on it under Article 227 of the Constitution of India and prayed to set aside.

Admittedly, the original gift deed which bears signature of the donor is not placed on record and the petitioners did not file rejoinder raising plea that the gift deed is forged, though the written statement is filed in the month of December 2012. In the absence of any specific denial, reference of the disputed signature on the certified copy or photostat copy of the document along with admitted signature of the donor is impermissible for the reason that the expert cannot compare the signatures on certified copy or photostat copy of the document as it would not show accuracy of original signature of the donor on the original document due to taking copies by mechanical process. Apart from that the petitioners did not raise any specific plea that it was forged by filing rejoinder to the plaint and in such case, referring certified copy or photo stat copy of the gift deed would not serve any purpose and in the absence of any plea and for filing to place original on record, this Court cannot accede to the request of the petitioners to refer the disputed signature on the photostat copy or certified copy of the gift deed along with the admitted signature of the donor.

However, it is for the petitioners to raise such plea and call for B-register or thumb impression register available with the Registrar's office taking necessary steps thereafter, but at this stage it is not permissible. Therefore, I find no error in the order passed by the court. Consequently, the revision is liable to be dismissed.

Accordingly, the civil revision petition is dismissed. No costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:05.03.2018
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