

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.433 OF 2017

ORDER:

The present revision is preferred by the revision petitioners aggrieved over the order, dated 23.11.2016, passed by the I Additional Junior Civil Judge, Chittoor, in I.A. No.520 of 2015 in O.S. No.317 of 2009 filed under Section 151 of the code of Civil Procedure, 1908, to admit the documents i.e., *Kararnama*, dated 02.08.1988 executed by R. Veera Swamy Naidu, R. Chandrasekhar Naidu, plaintiff No.2 and his brothers in favour of defendant Nos.1 and 2 and their brother, M. Subramanyam Naidu in evidence, and also the copy of Agreement, dated 22.12.1969, between R. Veeraswamy Naidu and R. Rama Naidu, to admit the said documents and to mark the same as exhibits through DW.2 which were already filed by them.

2. The revision petitioners herein are respondent Nos.1 and 2 - plaintiffs, while respondents herein are petitioners - defendants in the aforesaid I.A.

3. The trial Court observing that earlier, the very same petitioners - defendants filed applications in the suit requesting to direct plaintiffs to produce the original agreement, dated 22.12.1969, executed by R. Veeraswamy Naidu in favour of R. Ramanaidu, but the said application was closed since the plaintiffs denied the very existence of the document and, therefore, it was opined that there

would be no option for the defendants except filing the Photostat copy of the alleged documents subject to complying with other requirements. The trial Court also referred to the objection raised by the learned counsel for the plaintiff on the ground that the document relates to confirmation of right of way, dated 02.08.1988 executed by R. Veeraswamy Naidu and his sons in favour of the plaintiffs and others as it requires stamp duty and registration. The trial Court then proceeded with recording its finding observing that the contents therein would reflect that both parties had land in Survey No.9 and since one of the parties have no specific way for ingress and egress to their houses, the other parties accepted to use the way left in their lands, and as per the specific averments, no right is created in favour of other parties except giving permission to them to use the alleged way and, therefore, the submission made by the learned counsel for the plaintiffs was not correct and, accordingly, allowed the petition with costs.

4. Heard Sri S.V. Muni Reddy, learned counsel for the revision petitioners - plaintiffs, and Sri M. Venkata Ramana Reddy, learned counsel for respondents - defendant Nos.1 to 4.

5. The learned counsel for the revision petitioners herein would contend that *Kararnama* now filed was a Photostat copy and it amounts to leading secondary evidence and the provisions of Sections 63, 65 and 67 of the Indian Evidence Act, would apply, and the

procedure prescribed in leading secondary evidence ought to be observed and, therefore, the trial Court ought not to have allowed the petition. *Per contra*, the learned counsel for the respondents – defendants, would support the order under challenge.

6. There are two aspects which require consideration. First, in the earlier application filed by the very same defendants requesting to direct the plaintiffs to cause production of the original agreement, dated 22.12.1969, the existence of the same was denied and, therefore, that petition was closed, and the petition under challenge was filed as there was no other alternative. That finding recorded by the trial Court does not suffer from any material irregularity. The option left to the party when the very existence is denied is only to proceed with the alternative of submitting or filing a Photostat copy, in which direction, it was already filed according to the trial Court.

7. Concerning the objection raised by the learned counsel for the petitioners - plaintiffs that the document, dated 02.08.1988, requires stamp duty and registration as right is created thereunder, though, the trial Court has given a positive finding that such a right is not at all created and permission was granted to use the path-way, still, the petitioners - plaintiffs are hereby permitted to agitate the objection at the final stage of the proceedings when arguments are tendered in the suit. Thus, giving liberty to the petitioners - plaintiffs

to re-agitate the said objection now raised at the final hearing of the suit, the present revision is dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. But, however, it is left open to the revision petitioners - plaintiffs to agitate the objection now raised at the final hearing of the suit. In the circumstances, there is no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision, stand closed.

A. SHANKAR NARAYANA, J

April 02, 2018.
Mgr

