

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5299 of 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 30.08.2016 in I.A.No.1286 of 2015 in O.S.No.774 of 2014 on the file of the Court of IX Additional Chief Judge, City Civil Court at Hyderabad.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that respondents No.1 and 2 have filed O.S.No.774 of 2014 on the file of the IX Additional Chief Judge, City Civil Court at Hyderabad, against respondent Nos.3 and 4 for partition of the suit schedule properties. Pending suit, the petitioner filed I.A.No.1286 of 2015 under Order I Rule 10 of CPC to implead her as defendant No.3 in the main suit. Respondent Nos.1 and 2 filed counter opposing the petition. Respondents No.3 and 4 have not filed any counter. Basing on the material available on record, the trial Court dismissed the petition on 30.08.2016. Hence, the revision.

4. The following admitted facts can be culled out from the pleadings. Respondent Nos.1 and 2 are daughters and respondent Nos.3 and 4 are sons of K.Nagaraj, who died on 21.02.2006. It is also an admitted fact that the suit schedule

property belongs to late Nagaraj. Respondent Nos.1 and 2 filed the present suit seeking partition of the suit schedule properties on the ground that respondent No.4 is not cooperating with the petitioners and respondent No.3. The petitioner is none other than own daughter of respondent No.4. The petitioner is claiming the part of the suit schedule property alleging that her grand father late Nagaraj executed an unregistered Will dated 13.05.2003 in her favour bequeathing part of the suit schedule property. The petitioner along with the I.A., filed photocopy of the Will dated 13.05.2003.

5. It is the case of the petitioner that the original Will is under the custody of the advocate. At the time of arguments, learned counsel for the petitioner submitted that the petitioner will produce the original Will at appropriate time before the trial Court. One of the grounds for dismissal of the petition is that the petitioner has not produced the original Will. Production of original Will by the petitioner is imperative in order to adjudicate the *lis* involved in the petition. In the absence of the original Will, the Court is not in a position to decide whether the petitioner is having any interest or semblance of the interest in the suit schedule property.

6. It is the case of the respondent Nos.1, 2 and 3 that late Nagaraj died intestate on 21.02.2006. In order to appreciate the contention of the petitioner, it is not out of place to

extract relevant portion of the written statement filed by respondent No.4, who is none other than the father of the petitioner.

“That the contents of the plaint are not denied to the extent that the petitioners and the respondents are the children of late K.Nagaraj and that, he died intestate on 21.02.2006.”

7. A perusal of the above portion clearly reveals that the fourth respondent in unequivocal terms admitted that his father Nagaraj died intestate on 21.02.2006. Respondent Nos.1 to 4 are the competent persons to say whether their father died intestate or not. Respondent Nos.1 to 4, who are the daughters and sons of late Nagaraj clearly admitted that their father died intestate on 21.02.2006.

8. In order to appreciate the rival contentions, it is not out of place to extract para-3 of the affidavit filed by the petitioner before the trial Court.

“I submit that my grand father late K.Nagaraj was the absolute owner of the house property bearing No.2.2.647/149, situated at Central Excise Colony, Hyderabad. He died intestate on 21.02.2006.”

9. Petitioner also admitted that her grandfather died intestate on 21.02.2006. It is the admitted case of the petitioner and respondents that Nagaraj died on 21.02.2006 intestate. In paragraph No.5 of the affidavit, the petitioner has taken a specific stand that her grandfather Nagaraj

executed a Will dated 13.05.2003 in her favour in respect of Plot No.503 of Bharani Towers, Hyderabad.

10. Learned counsel for the petitioner submitted that by inadvertently the word 'intestate' is mentioned in para-3 of the affidavit.

11. A perusal of the record reveals that the petitioner is not an uneducated lady. The petitioner filed sworn affidavit before the trial Court stating that her grandfather died intestate. Apart from that, her paternal aunts, father and paternal uncle categorically admitted that Nagaraj died intestate. Having taken the plea that Nagaraj died intestate on 21.02.2006, how he executed the Will dated 13.05.2003 in her favour, is not properly explained by the petitioner. As observed earlier, non-production of original Will also *prima facie* casts a cloud on the plea set up by the petitioner. It is needless to say that a defendant in the suit can take inconsistent pleas. It is a settled principle of law that even in a civil suit, the defendant is not entitled to take mutually self-destructive pleas. In a suit for partition, each party can be treated as plaintiff as well as defendant. In such circumstances, this Court is unable to understand how the petitioner has taken mutually self-destructive pleas: one in para-3 and another in para-5 of the affidavit. If the Court accepts that Nagaraj died intestate, the question of executing a Will in favour of the petitioner on 13.05.2003 does not arise.

If Nagaraj executed the Will as claimed by the petitioner, what prompted her to take a plea that her grandfather died intestate on 21.02.2006. The petitioner is not entitled to take such mutually self-destructive pleas. Viewed from this angle also, the petition filed by the petitioner under Order I Rule 10 of CPC is not maintainable. The trial Court considered the above aspects in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial court. It is needless to say the revisional Court shall not lightly interfere with the order passed by the trial Court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court to set aside the same while exercising the power under Article 227 of the Constitution of India. Hence, the civil revision petition lacks merits and *bona fides* and the same is liable to be dismissed.

12. In the result, the civil revision petition is dismissed. The observations if any made by this Court are confined to this order only. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

4th July 2018
Rns