

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1220 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India assailing the order dt.04-12-2017 in I.A.No.750 of 2017 in O.S.No.211 of 2011 of the Principal Senior Civil Judge, Chittoor.

2. Petitioners are defendants in the suit.

3. The respondent filed the suit against them for declaration of title and for perpetual injunction and mandatory injunction etc. on the basis of an unregistered Will executed in his favour by one Shesha Reddy, who allegedly died on 23-01-2003 in his house.

4. Petitioners filed written statement opposing the suit claim. Issues were framed and trial commenced.

5. After the examination of plaintiff as P.W.1, one of the attestors of the Will was sought to be examined by respondent as P.W.2 and his affidavit in lieu of chief-examination was filed on 20-09-2017. Opportunity was given to petitioners to cross-examine that witness on 05-10-2017. However, the counsel for petitioners insisted that respondents' Advocate should produce all witnesses and then only he will cross-examine P.W.2. Respondents' counsel pointed out that there is no such provision to compel a party to produce all witnesses at a time. He also stated that it would be difficult to secure witnesses

in the manner suggested by the counsel for petitioners in the Court below.

6. The Court below noted the conduct of the counsel for petitioners and response of the counsel for respondent in the Court below and treated the cross-examination of P.W.2 as Nil.

7. This order was not challenged by the petitioners.

8. However, petitioners filed on 12-10-2017 I.A.No.750 of 2017 to recall P.W.2 for the purpose of cross-examination.

9. In the affidavit filed in support of this application, it is stated that the petitioners filed a petition on 05-10-2017 to direct the respondent to file chief affidavits of all witnesses connected with the Will, that the said petition is pending before the Court below and in order to meet the ends of justice, P.W.2 ought to be recalled.

10. Counter-affidavit was filed by respondent opposing this application stating that once having refused to cross-examine P.W.2, it is not open to petitioners to now seek to summon P.W.2 for cross-examination. It is also contended that on the evening of 05-10-2017, petitioners sent rowdy elements to P.W.2 to threaten P.W.2 that if he gives evidence in favour of respondent, he would be eliminated and that P.W.2 got scared and came to the respondent and pleaded his helplessness.

11. By order dt.04-12-2017, the Court below dismissed I.A.No.750 of 2017. It noted that the Court record showed that it directed on 08-09-2016 the respondent/plaintiff to adduce evidence as per list of witnesses by 17-10-2016; on 17-10-2016 chief-examination affidavit was filed by respondent as P.W.1 and he also filed I.A.No.808 of 2016 to relax the condition imposed in the docket order dt.08-09-2016 since the witnesses to the Will are spread over different places; and they are prepared to come to Court and depose evidence unless summons are taken; that the said application was disposed of by the Court below with a direction to the respondent to submit list of witnesses whom he intends to examine and to whom he intends to take summons by the next date of hearing without fail; that later the respondent/plaintiff filed a list and P.W.1 was cross-examined on different dates and cross-examination was completed by 15-09-2017. It thus noted that 11 months were taken by the petitioners to cross-examine P.W.1 and when chief-examination affidavit of P.W.2 was filed on 20-09-2017, again counsel for petitioners endorsed that all the witnesses relating to the attestation to the Will should be produced at once and requested time to cross-examine, and the matter was posted to 05-10-2017. It recorded on that day that the petitioners' counsel was not inclined to cross-examine the witness and that was why his evidence was closed. It observed that I.A.No.720 of 2017 filed by petitioners seeking a direction to respondent to file chief-affidavits of all the witnesses may be pending, but the issue raised in the said I.A. was already decided in I.A.No.808 of 2016 and the Court had already

relaxed the condition to produce all the witnesses at a time and the said order was not set aside in the Revision or otherwise. It opined that the petitioners having taken lot of time to cross-examine P.W.1, intend to adopt the same tactics to cross-examine P.W.2 and that even though witness was present on 05-10-2017 and sufficient time was given for cross-examination, petitioners did not cross-examine P.W.2. It also noted that respondent pleaded difficulty in procuring witness stating that witness was won over and not amenable to him.

12. Assailing the same, this Revision is filed.

13. Leaned counsel for petitioners contended that petitioners were denied opportunity to cross-examine P.W.2 and gross injustice would be caused to him if they are not allowed to cross-examine P.W.2.

14. I am unable to agree with the said contention since the petitioners did not avail the opportunity to cross-examine P.W.2 on 05-10-2017 in spite of being given sufficient time for such cross-examination, raising an untenable plea that respondent should produce all witnesses and only then he will cross-examine P.W.2. Such an attitude on the part of petitioners' counsel is to be deprecated since a counsel cannot be allowed to dictate the Court how it should conduct its proceedings particularly when there is no practice or provision of law to direct a party to produce all witnesses at once.

15. Also, when for cross-examination of P.W.1 alone the petitioners took more than 11 months, it would amount to causing

harassment to the witnesses if they are repeatedly called at the whims and fancies of the parties against whom they agreed to depose.

16. Therefore, I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

17. Therefore, the Civil Revision Petition fails and it is accordingly dismissed at the stage of admission. No costs.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Date: 12-06-2018
Vsv

JUSTICE M.S.RAMACHANDRA RAO

