

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.1459 OF 2018

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 05.10.2017 passed by the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.253 of 2017 in O.S.No.520 of 2014. The said suit was filed for a perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the suit schedule property, an extent of 152.77 square yards in Nacharam Village, Kapra Municipality, Uppal Mandal, Ranga Reddy District. I.A.No.253 of 2017 was filed therein by the plaintiff under Section 45 of the Indian Evidence Act, 1872, to send the alleged gift deed dated 18.10.1993 (Ex.B4) to a Forensic Science Laboratory Expert for comparison of the thumb impression of Golluri Mallaiah therein with the thumb impression in the Register dated 23.10.1990 of the Sub-Registrar, Uppal. By the order dated 05.10.2017, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiff is before this Court.

By order dated 16.03.2018, this Court granted interim stay of further proceedings in the suit, being of the opinion that the validity of the order under revision required examination.

Heard Sri Pottigari Sridhar Reddy, learned counsel for the petitioner/plaintiff, Sri G.Abdul Khader, learned counsel for respondent 1/ defendant 1, and Sri S.A.Razak, learned counsel for respondents 2 and 3/ defendants 2 and 3.

Parties shall hereinafter be referred to as arrayed in the suit.

In the affidavit filed in support of the subject I.A., the plaintiff made the following averments: The first defendant filed his evidence affidavit,

deposing as D.W.1, and marked the alleged gift deed dated 18.10.1993 as Ex.B4. He claimed that Golluri Mallaiah had executed the said document in favour of Golluri Mallesham, the father of the defendants. The plaintiff claimed that Golluri Mallaiah had executed registered gift settlement deed bearing Document No.10537 of 1990 dated 23.10.1990 in favour of his own daughter, A.Lakshmi, the mother of the plaintiff, wherein he had affixed his signature but Ex.B4, allegedly executed by him, only bore a thumb impression. The plaintiff therefore wanted comparison of the thumb impression in the said document with the thumb impression available in the Register of the Sub-Registrar, Uppal, obtained at the time of registration of Document No.10537 of 1990.

The defendants filed a counter contesting the I.A. Therein, the first defendant, speaking for himself and the other defendants, denied the execution of the registered gift settlement deed in favour of A.Lakshmi, the plaintiff's mother, *vide* registered Document No.10537 of 1990 dated 23.10.1990. He further stated that he had no knowledge about the said document and that the question of sending Ex.B4 to the FSL Expert for comparison of the thumb impression therein with that contained in the record of the registration authorities did not arise in a suit for injunction. He further pointed out that the application was filed at a belated stage when the suit was posted for arguments and prayed for dismissal of the I.A.

Upon considering the rival pleadings, the trial Court opined that in a suit for injunction *simpliciter*, the prime factor would be possession. As both parties were claiming under the same person, *viz.*, Golluri Mallaiah, and were disputing each other's title documents, the trial Court opined that complicated questions in respect of title need not be adjudicated in the present suit which was filed for an for injunction only. The trial Court further

opined that there were no admitted contemporaneous documents which could be used for the purpose of comparison. On these grounds, the trial Court disallowed the plea of the plaintiff and dismissed the I.A.

As rightly pointed out by the trial Court, O.S.No.5230 of 2014 was filed seeking a perpetual injunction and no more. Though in a suit for injunction, the issue of title may be gone into incidentally, it does not play the primary role. Possession over the suit schedule property would be the crucial factor that would need to be ascertained by the Court while dealing with such a suit. In the present case, both parties claim title under the same person, Golluri Mallaiah. Complicated questions would therefore arise as to who has better title which neither arise nor can be resolved in an injunction suit *simpliciter*.

On this short ground, this Court holds that the trial Court did not err in disallowing the plea of the plaintiff for expert examination of the thumb impression in the alleged title document of the defendants.

The civil revision petition is devoid of merit and is accordingly dismissed. Interim order dated 16.03.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

3rd AUGUST, 2018

PGS

SANJAY KUMAR, J