

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 6565 OF 2012

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed questioning the decree and judgment dated 27-09-2012 in C.M.A.No. 3 of 2009 on the file of the Court of V Additional District Judge at Vijayawada (for short, 'the Court below'), whereby it confirmed the order and decree dated 19-01-2009 in I.A.No. 2104 of 2008 in O.S.No. 1219 of 2008 on the file of the Court of Principal Senior Civil Judge, Vijawada (for short, 'the trial Court').

2. It is the case of the petitioners-plaintiffs that schedule property is ancestral property of Changatipati Lakshmipathi and thus the petitioners are entitled to claim share through their father. However, the respondents-defendants denied the nature of acquisition of schedule property while contending that it was the self acquired property of Lakshmipathi who in turn executed an unregistered Will dated 18-12-1997 bequeathing schedule property dividing the same into five equal shares.

3. The trial Court initially granted *interim* order of *status quo* and on merits, it was vacated. The appeal was also dismissed. The contention of learned counsel for the petitioners before this Court is that the order passed by the trial Court and affirmed by the Court below are contrary to Rules 60 and 115 of Civil Rules of Practice and requested this Court to remand the matter with a direction to dispose of the petition following Rules 60 and 115 of Civil Rules of Practice while directing both parties to maintain status quo. Learned counsel for the respondents raised several contentions based on merits and requested to dismiss the revision affirming the judgment passed by the Court below.

4. Admittedly, while deciding I.A.No. 2104 of 2008 in O.S.No. 1219 of 2008, the trial Court did not mark any documents on behalf of either party but considered some of the documents filed along with memo by the petitioners. Rule 60 of Civil Rules of Practice deals with proof of facts by affidavit which reads as under:

"Fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these Rules or ordered by the Court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to judgment."

At the same time, Rule 115 of Civil Rules of Practice prescribes the method of marking of exhibits. When both the Rules are read together, it is the duty of the Court to mark the documents produced by either party for limited purpose of deciding an interlocutory application, otherwise it is a serious irregularity. On this ground alone, the impugned order is not sustainable and the same is liable to be set aside.

5. The civil revision petition is accordingly allowed setting aside the decree and decretal order dated 27-09-2012 in C.M.A.No. 3 of 2009 on the file of the Court of V Additional District Judge at Vijayawada and I.A.No. 2104 of 2008 in O.S.No. 1219 of 2008 is remanded to the Court of Principal Senior Civil Judge, Vijayawada, directing the latter to restore the matter to its original number and dispose of the same as expeditiously as possible and in any event not later than three months from the date of receipt of a copy of this order while directing both parties to maintain *status quo* till disposal of the I.A. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

Date: 01-02-2018.

JSK

M.SATYANARAYANA MURTHY, J.