

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1704 of 2018

ORDER:

This Civil Revision Petition is directed against the order dated 01.02.2018 in I.A.No.54 of 2018 in O.S.No.57 of 2011 passed by learned Principal Junior Civil Judge, Miryalaguda, dismissing the petition filed by the defendants 2 and 3 seeking to send the thumb impression of the plaintiff obtained in the open Court and Exs.A3 and B6 to the finger print expert for comparison of the thumb impression of the plaintiff and her father with the thumb impression available on Ex.B6.

2) It is a suit for perpetual injunction filed by the plaintiff in respect of 'A' and 'B' schedule properties. The plaintiff claims to have obtained suit properties by virtue of gift settlement deed dated 22.10.2010 executed by her father. The 1st defendant is the brother of father of plaintiff; 2nd defendant is the son of 1st defendant and 3rd defendant is the son of other brother of 1st defendant. They denied the plaint allegations. Their main contention is that the total extent of plaint 'A' schedule is Ac.1.07 gts. which was sold by the plaintiff's father and plaintiff under Ex.B6—sale deed. They also contended plaint 'B' schedule properties are imaginary. Be that it may, in order to prove Ex.B6—sale deed, they filed I.A.No.54 of 2018 to refer the thumb impression of plaintiff obtained in the open Court along with Ex.A3—gift deed and also Ex.B6—sale deed to the finger print expert. However, the said petition

was dismissed by the trial Court mainly on the observation that a suit filed by the plaintiff was only an injunction suit but not a title suit and further, mere proof of thumb impression will not amount to proof of execution of sale deed.

Hence, the CRP.

3) Heard arguments of Sri M.Rajamalla Reddy, learned counsel for petitioners and Smt.Annapurna Sree Ram, learned counsel for 1st respondent and 2nd respondent died as per CT.

4a) Severely castigating the order impugned, learned counsel for petitioners would submit that though the suit under reference is an injunction suit, the Court can incidentally go into the title when the parties set up rival title and therefore, the trial Court is not correct in dismissing the petition.

b) Nextly, he would submit that though the plaintiff staunchly denied the title of the defendants and execution of Ex.B6—sale deed, however, in her cross-examination she has reported no objection for referring the document to expert. As such, the trial Court ought to have given an opportunity to the defendants to prove the genuineness of Ex.B6 by referring the same to expert. He thus prayed to allow the CRP.

5) In oppugnation, learned counsel for 1st respondent supported the impugned order.

6) On a careful scrutiny of the order impugned, I find force in the submission of learned counsel for petitioners. Even though the suit is one for injunction and not a title suit, still the Court can incidentally go into the aspect of title when both parties set up rival title under different documents. Therefore, the trial Court was not correct in dismissing the petition on the ground that suit was not a title suit but an injunction suit.

7) Then, coming to Ex.B6, PW1 in her cross-examination denied the suggestion that on 03.06.1990 her father and other family members sold away an extent of Ac.1.07 gts. in Sy.No.16 to defendant No.1 through a simple sale deed and delivered possession. Thus, it is clear that the plaintiff denied execution of Ex.B6—sale deed. However, she stated that she has no objection to compare the thumb impression available in the said document with her thumb impressions. She further stated the thumb impressions in Ex.A3 are of her father. She denied that her father and other family members sold away the property to defendant No.1 and created Ex.A3 to cause wrongful loss to defendant No.1. So, in substance, the version of the plaintiff is that on one hand she denies the execution of Ex.B6 by her father and other family members but on the other hand, she expresses no objection for referring the said document to the expert. In that view, the trial Court ought to have given an opportunity to the petitioners to establish the veracity of Ex.B6. It is true Ex.B6 is an unregistered sale deed. Whether the said document creates any right in favour of defendants is altogether a different aspect which can be considered by the trial Court at the relevant stage of its judgment.

8) In the result, this CRP is allowed by setting aside the order in I.A.No.54 of 2018 in O.S.No.57 of 2011 and the trial Court is directed to refer Exs.B6 and Ex.A3 and thumb impression of the plaintiff obtained in the open Court to the finger print expert for comparison at the cost of the defendants. No costs.

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

Date: 23.11.2018
Murthy

U. DURGA PRASAD RAO, J

