

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2181 of 2018

ORDER:

1) Assailing the order dated 13.03.2018, passed in I.A.No.269 of 2018 in O.S.No.646 of 2010 on the file of the Principal Junior Civil Judge, wherein an application filed under Order XVI Rule 7 of C.P.C. to summon Sri Pothukuchi Suryanarayana Murthy, Advocate, Rajahmundry, to give evidence on behalf of the plaintiff in respect of Ex.A12, was dismissed, the present Civil Revision Petition came to be filed under Article 226 of the Constitution of India.

2) The petitioner/plaintiff filed O.S.No.646 of 2010 for partition of the plaint schedule property. After examining the plaintiff as PW.1, two applications came to be filed by the petitioner ie., to recall the petitioner and to receive the certified copy of the order in O.P.No.413 of 1995 on the file of the Principal District Judge, Rajahmundry, which was filed by the 9th respondent herein and prosecuted the same through his counsel Sri P.Suryanarayana Murthy, Advocate, Rajahmundry. It is said that the 9th respondent brought into light a fabricated and forged Will dated 02.02.1985 along with some other documents. The petitioner came to know about the alienation of the suit schedule property basing on

the fabricated and forged Will dated 02.02.1985. Hence, he wants to examine the advocate, who filed O.P.No.413 of 1995 and conducted the case on behalf of the 9th respondent, as a witness with regard to Ex.A12, hence filed a petition to summon the said advocate.

3) A counter came to be filed by the 9th respondent opposing the same. It is stated that the request of the petitioner to summon the advocate, who conducted the case of the 9th respondent in O.P.No.413 of 1995 is unwarranted. He is not competent to speak to the contents of the Will. According to him, the communication made between the advocate and his client is a privileged information and it cannot be divulged or disclosed as witness, without the consent of his client. The averments to the affect that the petitioner wants to ascertain the cross-examination done by Sri P.Suryanarayana Murthy, Advocate, who filed O.P.No.413 of 1995 and to depose in this case as his witness, is an attempt to misuse the Court of law.

4) After considering the rival submissions, the trial Court rejected the request of the petitioner. Challenging the same the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner mainly submits that summoning of the advocate, who conducted the earlier

proceedings to which the plaintiff was not a party, is very much essential to speak to the contents of the Will dated 22.10.1982. According to him, he would be put to irreparable loss if the said Advocate is not summoned.

6) On the other hand, the learned counsel for the respondents would contend that if the request of the petitioner is accepted it will lead to several complications and it would be difficult for the advocates to conduct cases in future.

7) As seen from the record, the person/ advocate, who is now sought to be summoned as a witness was not a party to any of the proceedings nor was an attester to the Will, in respect of which the petitioner herein wants the said witness to depose. He was only a counsel for the 9th respondent in the earlier proceedings. A perusal of the material on record would show that the petitioner herein intend to issue summons to the said advocate to know whether or not a Will dated 22.10.1982 came to light. The said fact can be known on perusal of the documents filed in the said O.P. To know what happened in the said O.P., it is not necessary to summon the counsel, who appeared for the other side in the said case. In my view no party is entitled to summon an advocate, who appeared for the opposite party in the earlier

proceedings, to know the existence or otherwise of the documents.

8) Having regard to the above and since the advocate, who is sought to be summoned is neither party nor an attester to the Will and as has nothing to do with the case, I feel that the request of the petitioner for summoning the advocate, cannot be accepted.

9) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.06.2018
gkv

