

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.2712 of 2018

ORDER:

1) Assailing the order dated 29.01.2018, passed in I.A.No.31 of 2018 in O.S.No.436 of 2010, on the file of the Principal Junior Civil Judge, Rajamahendravaram, wherein an application filed Under Order VIII Rule 1 A(3) read with Section 151 of C.P.C., to receive the documents, was allowed, the present Civil Revision Petition is filed.

2) The petitioners/ plaintiffs filed O.S.No.436 of 2010 seeking permanent injunction restraining the respondents/ defendants and their men from interfering with their peaceful possession and enjoyment over the suit schedule property. A written statement came to be filed by the defendants disputing the averments made in the plaint. When the matter is posted for defendants' evidence, learned counsel for the defendants filed a memo stating that they intend to examine DW.1 on their behalf and they do not propose to examine any of the witnesses.

3) A reading of the affidavit filed in support of the petition, would show that during the pendency of the suit, the plaintiffs and defendants sold their respective shares to him under various sale deeds. The said documents are filed in the Court in I.A.No.2970 of 2017. It is said that after purchase of the said property, he applied for mutation of property in his name in the municipal records and the municipal authorities also mutated his

name in the place of his vendors and he paid the property tax. It is further stated that the original Will executed by Indira Devi in favour of the defendants was handed over to him at the time of purchase and the original of the said Will was filed in the final decree proceedings, which are pending before V Additional District Court, Rajamahendravaram, hence now he filed the Xerox copy of the said Will. It is said that since the documents are mixed up with other records, he is unable to file the same. According to him, he intend to file four documents namely Photostat copy of Will dated 09.11.2009 executed by Smt. Gera Florance Indira Devi in favour of the defendants, mutation certificate dated 28.11.2017 issued by Municipal Corporation, Rajamahendravaram, Original property tax receipt dated 24.10.2017 issued by Municipal Corporation, Rajamahendravaram and original water tax receipt dated 24.10.2017 issued by the Municipal Corporation, Rajamahendravaram.

4) The application which was filed for taking the documents on file was allowed, which is assailed in this revision.

5) In spite of service of notice there is no representation on behalf of the respondents. The plea of the revision petitioners is that though there is a reference about the execution of Will in the written statement, no steps were taken to file the same along with the written statement and at a very belated stage they sought to bring this document on record through third party and that too Xerox copy of the document, which is not admissible in

evidence. Insofar as the other three documents, it is represented that there is no reference about them in the written statement and as the said documents which are issued by the government authorities, the same may be received.

6) The main reason urged by the respondents for not filing the Will appears to be that the Xerox copy of the Will got mixed up with other record and as such the said document could not be filed at the earliest point of time.

7) Dealing with the provisions of Order VIII Rule 1 A (3) of C.P.C., and in a case which is similar to the case on hand, a learned Single Judge of this Court in *Managing Director, APSRTC, Hyderabad and others v. P.V.Surya Narayana*¹, observed as under:

“Application to produce documents filed merely stating that the same could be traced out only recently. But not stating clearly reasons for not filing proposed documents along with written statement. Reason stated, if treated as reasonable one, same can be a reason in each and every case. But, by no stretch of imagination, that can be said to be a valid reason. Petitioners did not even state in affidavit that despite their due diligence, proposed documents could not be traced out at relevant point of time. Order impugned does not, therefore, suffers from any jurisdiction error or patent perversity, so as to warrant interference by High Court in exercise of power of judicial review under Article 227 of the Constitution.”

8) In view of the judgment referred to above, the reason given by the respondents for not producing the original of the Will

¹ 2017(4) ALD 733

cannot be accepted. Hence, the finding of the trial Court with regard to receipt of Xerox copy of the Will dated 09.11.2009 is rejected, more so when it is only a Xerox copy of the original Will. Insofar as the other documents are concerned, the trial Court is permitted to receive the same subject to proof and relevancy.

9) With the above modification, the Civil Revision Petition is disposed of. However, it is always open to the respondents to file a petition before the trial Court to summon the original Will from V Additional District Judge, Rajamahendravaram, in which event, the trial Court shall consider the same in accordance with law. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

10.08.2018
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JUSTICE C. PRAVEEN KUMAR

