

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.3220 of 2018

ORDER:

Aggrieved by an order passed by the trial Court appointing an Advocate Commissioner to record the cross-examination of PW.6, the defendants 2 and 6 have come up with the above revision.

2. Heard Mr. S. Subba Reddy, learned counsel for the petitioners and Mr. Ch. Dhanamjaya, learned counsel for the respondents 1 & 2.

3. The respondents 1 and 2 filed a suit in O.S.No.10 of 2010 praying for a decree of declaration that the 1st plaintiff is the absolute owner of items 1 to 4 of the suit schedule properties and the plaintiffs 1 and 2 are the absolute owners of item No.5 of the plaint schedule property by virtue of a Will dated 06.12.2007 and for a decree of possession in respect of Item Nos.1 & 2 and permanent injunction. The defendants in the suit propounded another Will, dated 09.05.2008 allegedly executed by the very same testator. But the plaintiffs took a plea that the testator was actually taking treatment as an inpatient in a hospital at Rajahmundry from 21.04.2008 till 15.05 2008 and that therefore she could not have executed the Will dated 09.05.2008 propounded by the defendants.

4. One Dr. A.V. Subba Rao under whom the testator allegedly took treatment, was summoned to give evidence and he came and gave evidence as PW.6. Though chief examination was over, cross-examination got postponed contending that PW.6 is a busy Cardiologist and that he was finding it difficult to attend the Court on every occasion, the plaintiffs took out an application in I.A.No.226 of 2018 for appointment of an Advocate Commissioner to record the cross-examination of PW.6. The said

application was allowed by the Court below forcing the defendants 2 and 6 to come up with the above revision.

5. The main contention of Mr. S. Subba Reddy, learned counsel for the petitioners is that since PW.6 had already given his deposition in chief in open Court, his cross-examination in the open court is necessary, to bring out his demeanor. According to the learned counsel, there has been tampering of the case sheets and medical reports marked as Exs.X.1 to X.3 and that therefore, the petitioners would like to confront PW.6 with this tampering and contradictions. Therefore, the learned counsel contended that the cross-examination of PW.6 through the Advocate Commissioner will completely dilute the essence of cross-examination. The learned counsel contended that on any particular date fixed by this Court, the counter part of the learned counsel for the petitioners will proceed with the cross-examination of PW.6, without causing any hindrance to his professional duties.

6. I have carefully considered the above submissions.

7. It is true that the examination of a person in open Court will help the Judge to see the demeanor of the witness. But the art of appreciating the demeanor of witness, in my considered view, is now dead and gone. After the revamping of the entire Code of Civil Procedure in the year 2002, the chief examination itself is reduced to the form of an affidavit. In nearly three decades of my career I have hardly come across a judgment of a trial Court where the demeanor of the witness was commented upon. Therefore, I do not think that the petitioners can make much ardour about the same.

8. PW.6 is not a party to the litigation. He is a disinterested third party. It is true that the plaintiffs are professional Doctors. But it does not

mean that PW.6, who allegedly treated the testator, can be taken to be an interested witness.

9. PW.6 is a professional cardiologist. The Court should give some leverage to the professionals who are summoned as witnesses in cases where they have no personal interest. If a professional cardiologist can save the life of one patient during the time when he is summoned to appear in Court, that call of duty should be respected by Courts. Therefore, I do not think that there is anything wrong with the order of the trial Court warranting interference. Hence the civil revision petition is dismissed. There shall be no order as to costs.

10. As sequel, miscellaneous petitions pending in this revision, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

7th September, 2018
Js.



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.3220 of 2018



7th September, 2018

Js.