

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.3798 and 3808 of 2018

COMMON ORDER:

1) C.R.P.No.3798 of 2018 is filed under Article 227 of the Constitution of India, aggrieved by the order dated 08.06.2018, passed in I.A.No.69 of 2018 in O.S.No.148 of 2014 on the file of the IV Additional District Judge, East Godavari at Kakinada, wherein an application filed under Order XVI Rule 15 and Section 151 of C.P.C., to summon the pay bill registers for the years 1976 to 1978, which are in the custody of Assistant Director of Agricultural Department, Kakinada, having signatures of Guthula Suryarao, who worked in the said department, was rejected. C.R.P.No.3808 of 2018 is filed, aggrieved by the order dated 08.06.2018, passed in I.A.No.68 of 2018 in O.S.No.148 of 2014, on the file of the IV Additional District Judge, East Godavari at Kakinada, wherein an application filed under Section 45 of the Evidence Act to send the pay bill registers for the years 1976-1978, having signatures of late Guthula Suryarao, to be compared with the Will dated 09.07.1979 to the handwriting expert to note down the age of the ink, was dismissed.

2) Since the issues involved in both the Civil Revision Petitions are interconnected, they are being disposed of by this common order.

3) The petitioners herein filed O.S.No.148 of 2014 seeking partition of the suit schedule property. When the suit was posted for arguments, the petitioners herein filed the present applications to send the pay bill register for the year 1976 to 1978, having the signatures of late Guthula Suryarao, to compare with the Will (Ex.B1) dated 09.07.1979 to handwriting expert, to note down the age of the ink by summoning the said pay bill register, which is in the custody of Assistant Director of Agricultural Department, Kakinada.

4) A counter came to be filed by the respondents stating that though the petitioners are aware about the execution of the Will, executed by their father in the year 1979, but for the reasons best known they kept quiet till date and the present applications came to be filed at a very belated stage ie. when the suit is posted for arguments.

5) After considering the rival submissions made, the trial Court dismissed the applications. Challenging the same, the present Civil Revision Petitions are filed.

6) Learned counsel for the petitioners would submit that the 2nd respondent herein created a Will, to grab the property, as such, it is necessary to summon the Pay Bill Register for the years 1976 to 1978 which are in the custody of Assistant Director of Agricultural Department, as the father of the petitioners worked as an Attendar in the said office, so as to compare the signatures in the Pay Bill Register with the signature on the Will dated 09.07.1979.

7) Learned counsel for the respondents would submit that prior to filing of the suit, a legal notice was issued to the respondents by the petitioners, pursuant to which the Will, dated 09.07.1979, was furnished to the petitioners. As the petitioners were aware about the execution of Will prior to filing of the suit, the applications of this nature should have been filed at the earliest point of time.

8) In *Kaveti Sarada V. Vemineni Hymavathi*¹ this Court was dealing with a case where the suit was filed on the basis of a pronote. Plea of the defendant was that it was a forged one. After examination of plaintiff, attestor and scribe, the defendant filed an application to send the pronote to an expert. The said application was dismissed on the ground

¹ 2006 (4) ALD 460

that the said application came to be filed at a belated stage.

9) In *Papini Ramulu V. A.Lavanya*² where the trial Court rejected an application filed under Section 45 of the Evidence Act on the ground that the same was filed with an intention to delay the proceedings, which was approved by this Court.

10) In the instant case, admittedly the defendants' evidence is completed and the suit is posted for arguments. At that stage, the present applications came to be filed for summoning the Pay Bill Register of the years 1976 to 1978, having signatures of late Guthula Suryarao, to compare with the Will (Ex.B1) dated 09.07.1979 to handwriting expert to note down the age of the ink and to summon the said pay bill register, which is in the custody of Assistant Director of Agricultural Department, Kakinada.

11) It is to be noted here that prior to filing of the suit a legal notice was issued by the petitioners demanding partition of the suit schedule property. The respondents herein got issued reply notice and also furnished a copy of the Will executed by their father. In the cross-examination,

² 2012 (6) ALD 692

3rd petitioner, who was examined as PW.2, admits that she has perused the Will and also admitted that in the said Will it was mentioned that if their marriages do not perform prior to the death of her father, the same have to be performed by selling of Ac.0.75 cents of landed property. No steps were taken for sending the said document ie. Will to the handwriting expert, at the earliest point of time though aware about the existence of such Will. No reasons are given as to why necessary steps were not taken at the earliest point of time. Hence, filing of the present applications at the belated stage, more so when the suit is posted for arguments cannot be entertained.

12) Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs.

13) Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.07.2018
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