

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5002 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 17.08.2017 passed in I.A.No.471 of 2017 in O.S.No.27 of 1995 on the file of the Court of the Senior Civil Judge, Narsapuram.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the revision are briefly as follows:

The petitioners filed O.S.No.27 of 1995 on the file of the Court of the Senior Civil Judge, Narsapuram, against the sole defendant Ande Anjamma for partition of the suit schedule property. After full-fledged trial, the trial Court decreed the suit in part. Feeling aggrieved by the judgment and decree of the trial Court, the petitioners preferred A.S.No.2040 of 2001 on the file of this Court. During pendency of the appeal, Anjamma died. The second respondent filed an application to permit him to come on record as legal representative of late Anjamma and the same was allowed. The appellate Court remanded the matter with the following observations:

“However, as agreed by both the counsel the matter is remanded to the lower Court for consideration of the issue as to whether the Will said to have been executed by the defendant in favour of the second respondent herein is true, valid and binding. Similarly, on the other points raised by the learned counsel for the appellants also, the parties, if advised, may file necessary applications or lead any further evidence, and in such a case, the lower Court,

after giving reasonable opportunity to both the parties to adduce evidence, shall decide the matter in accordance with law.”

After remanding of the matter, the petitioners filed an interlocutory application to implead the purchasers as defendants. The trial Court allowed the application and respondent Nos.3 to 15 were brought on record as defendant Nos.3 to 15. The entire controversy revolves around the registered Will dated 24.08.2000. During pendency of the suit, the petitioners filed I.A.No.471 of 2017, under Section 45 of Indian Evidence Act, to send Ex.B.96-Will dated 24.08.2000 to the expert for comparison with the thumb mark of the Anjamma on a deposition. The trial Court dismissed the petition on the ground that the second respondent opposing for sending of Ex.B.96 to the expert. Hence, the revision.

4. The learned counsel for the petitioners strenuously submitted that there is no need to take plea of forgery in the plaint. He further submitted that even without taking the plea of forgery the petitioners are entitled to seek the Court to send Ex.B.96 to the expert for comparison.

5. *Per contra*, learned counsel for the second respondent strenuously submitted that the petitioners, without taking a plea of forgery, are not entitled to file an application under Section 45 of Indian Evidence Act.

6. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

7. It is needless to say that burden of proof of lies on the person, who take the plea of forgery. The pleadings form bed rock of a civil suit. Any amount of oral or documentary evidence without pleading is of no avail. The petitioners are very much aware of the validity or otherwise of the Will from the date of remanding of the appeal. After remanding of the matter, the petitioners filed the petition under Order VI Rule 17 C.P.C. seeking amendment of the plaint to implead the purchasers as defendants in the main suit. For one reason or other, the petitioners did not take any steps to seek for amendment of the plaint to take the plea of forgery. Without taking the plea of forgery, the petitioners are not entitled to file an application under Section 45 of Indian Evidence Act. If the argument of the learned counsel for the petitioners is accepted, a party to the proceedings as a matter of right is entitled to file an application under Section 45 of Indian Evidence Act even without taking the plea of forgery of document in question. With great respect to the learned counsel for the petitioners, I am unable to accede to the contention that a party to the proceedings without taking plea of forgery of document in question is entitled to file an application under Section 45 of Indian Evidence Act. It is needless to say that a party to the proceedings is bound to take his defence at the earliest point of time. For the reasons best known, the petitioners did not take the plea of forgery while amending the plaint. In such circumstances, the petitioners are not entitled to file an application under Section 45 of Indian Evidence Act to send Ex.B.96 to the expert. As rightly pointed out by the learned counsel for the petitioners, the burden of proof lies on the propounder of the Will to dispel the suspicious

circumstances surrounding the execution of the Will. The trial Court dismissed the petition on the ground that the second respondent opposing for sending of Ex.B.96 to the expert. Basing on the material available on record, this Court is of the considered view that it is not a fit case to send Ex.B.96 to the expert in view of non-taking of a plea of forgery even in the amendment petition. Viewed from any angle, there are no grounds much less valid grounds to set aside the impugned order. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

8. In the result, the Civil Revision Petition is dismissed. However, the trial Court is hereby directed to dispose of the suit without being influenced by the observations, if any, made by this Court in this revision petition. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 14.12.2018
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