

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.2092 of 2011

ORDER:

Heard Mr.P.Vijay Kiran for revision petitioner and Mr.G.Pedda Babu for respondents.

The plaintiff in O.S.No.314 of 1995 is the revision petitioner. The revision petitioner filed the suit for declaration of title and also that the will dated 15.08.1991 (Ex.A-1) executed by late Kondamma is valid and binding on all the concerned i.e., defendants/respondents herein. The plaintiff examined PW.1 and PW.2 and thereafter the respondents have examined as many as 12 witnesses. At the said juncture, the revision petitioner filed I.A.No.1231 of 2010 for sending Ex.A1 for opinion of an expert to compare with the admitted thumb impression of executant late Kondamma in written statement dated 08.12.1971 in O.S.No.64 of 1971 in the Court of Senior Civil Judge, Guntur. The revision petitioner prayed for summoning written statement, treat the same as admitted thumb impression of executant and send Ex.A-1 for expert's opinion.

The respondents contested the application by filing detailed counter.

This Court does not propose to advert to all the objections raised by respondents herein but for the purpose of disposing of C.R.P., it is sufficient if the following objections are taken note of.

(a) The application is filed when the suit is posted for arguments.

(b) The oral evidence in proof of execution of Ex.A-1 is available on record.

The respondents have examined as many as 12 witnesses basing on the pleadings and the issues between the parties. The revision petitioner neither has taken steps at the earliest point of time nor disclosed reasons to send Ex.A1 for expert's opinion that too by comparison with the thumb impression said to have been made in the written statement dated 08.12.1971 in O.S.No.64 of 1971. The respondents further denied that the executant under Ex.A-1 has nothing to do with the said suit or that she has affixed her thumb impression in the written statement. Every detail stated by revision petitioner was contested.

The learned trial Judge by referring to three circumstances that the oral evidence is available, the Court can consider and decide the rights between the parties from the evidence now brought on record, and thirdly that the application is filed at the stage when the suit is posted for arguments, in other words as very belated, rejected the application. Hence, the Civil Revision Petition.

Mr.P.Vijay Kiran contends that the trial Court committed an error by taking note of the stage at which the present application is filed as belated and ought not to have been dismissed the

application. He further contends that though the revision petitioner has placed before the Court the ocular evidence on Ex.A-1 with a view to assist the Court in arriving at the genuineness of Ex.A1, the opinion of expert is sought for. The application if is ordered, helps the Court and the dispute between the parties can be resolved.

Mr. Pedda Babu contends that firstly filing of the present application at very advanced stage ought to be appreciated by the Court with a view not to reopen everything that has been completed. He further submits that in between the ocular and expert's evidence in a few cases, the Court may be authorized to accept the ocular evidence and decide the issue. The request of revision petitioner if is accepted, the whole trial is opened and in such an event, the respondents are put to great hardship. No ground is made out warranting interference of this Court under Article 227 of the Constitution of India. He prays for dismissing the Civil Revision Petition.

After taking note of the first submission of learned counsel appearing for the revision petitioner, the stage of filing application i.e., at very advanced stage or at belated stage, the orders ought not to be passed. This Court does not propose to consider the issue on same lines. The facts if are merely resisted, it is clear the revision petitioner with a view to establishing execution of Ex.A1 by Kondamma has let in oral evidence. The witnesses were subjected to cross-examination, thereafter all the witnesses were examined on

behalf of the defendants. For all purposes, the trial is over. The suit was posted for arguments. At that stage, the revision petitioner has filed the instant application for sending the document for expert's opinion. The timing though not very important in all the cases, timing also plays vital role in conducting free and fair trial on issues framed by the trial Court. This Court would have considered the request for sending the document for expert's opinion if the revision petitioner could not and did not produce evidence in execution of the Will. Since the evidence is already let in, the effort now is an after thought and this Court is not persuaded. No ground is made out under Article 227 to interfere with the discretion exercised by the trial court.

The revision fails and is accordingly dismissed. The suit is directed to be disposed of within two months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.
No order as to costs.

S. V. BHATT, J

Dt: 04-10-2018
Prv

