

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4742 of 2016

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 26.07.2016 passed on a Memo in O.S.No.106 of 2008 on the file of the Court of the VI Additional District Judge, East Godavari at Kakinada.

2 Heard the learned counsel for both sides.

3 A perusal of the record reveals that the respondent Nos.1 and 2 herein filed O.S.No.106 of 2008 on the file of the Court of the VI Additional District Judge, Kakinada against the petitioners and respondent Nos.3 to 5 herein seeking partition of the suit schedule property. During pendency of the suit, P.W.1 filed her chief examination affidavit. The respondent Nos.1 and 2 have also filed I.A.No.980 of 2015 under Order XVI Rule 7, 7(A) and 15 r/w Section 151 CPC, requesting the trial court to issue summons to one Gollapalli Chakradhara Satyanarayana Murthy to give evidence as attesting witness of the Registered Will Dated 09.01.1987 executed by Mamidala Surya Rao. The petitioners herein who are defendant Nos.1 to 3 in the suit, filed Memo before the trial court on 26.7.2016 praying the trial court to dispose of I.A.No.980 of 2015 filed by the respondent Nos.1 and 2. The trial court dismissed the said Memo. Hence the present Civil Revision Petition.

4 Now the point for determination in this Civil Revision Petition is whether there is any illegality or irregularity or impropriety in the impugned order, warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India?

POINT:

5 The petitioners herein are defendants in the main suit. A perusal of the record reveals that respondent Nos.1 and 2 are placing reliance on a registered Will dated 09.01.1987 - Ex.A.2. The petitioners are questioning the legality of the same. After filing of the chief examination affidavit, the respondent Nos.1 and 2 filed I.A.No.980 of 2015 to issue summons to one of the attestors of the Will dated 09.01.1987. At that stage, the petitioners herein filed a Memo requesting the trial court to dispose of the I.A.No.980 of 2015. It is the further case of the petitioners that they will defer cross examination of P.W.1 till the court passes order in I.A.No.980 of 2015.

6 It is a settled principle of law that the propounder of the Will has to dispel the suspicious circumstances surrounding the execution of the Will. If the plaintiff fails to prove the Will, eventually, the suit is liable to be dismissed. This Court is unable to understand, why the petitioners herein are insisting to summon the attesor of the Will on which the respondent Nos.1 and 2 are relying. The possibility of filing this type of Memos in order to protract the matter cannot be ruled out completely. The petitioners have no right whatsoever to say that they will not cross examine the witness unless the court summons the attesor of the Will dated 09.01.1987. The trial court made an observation that the propounder of Will i.e. P.W.1 has to examine the witness. The trial court rightly dismissed the Memo filed by the petitioners. As observed earlier, the petitioners have no right whatsoever to refuse to cross examine P.W.1 unless the

court disposes of I.A.No.980 of 2015. Disposal of I.A.No.980 of 2015 has nothing to do with the cross examination of P.W.1. I am fully endorsing with the findings recorded by the trial court. I see no illegality, irregularity or impropriety in the impugned order, warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India.

7 The Civil Revision Petition lacks merit and bona fides and accordingly the same is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Dt: 21.08.2018

Kvsn

