

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.486 of 2016

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 03.12.2015 passed in I.A.No.624 of 2015 in O.S.No.185 of 2012 on the file of the Court of the Principal Junior Civil Judge, Proddatur.

2 Heard the learned counsel for both sides.

3 A perusal of the record reveals that the petitioners filed O.S.No.185 of 2012 on the file of the Court of the Principal Junior Civil Judge, Proddatur against the respondents seeking partition of the suit schedule property into eight equal shares by metes and bounds and allot five such shares to the petitioners and put them in separate possession. During pendency of the suit, the petitioners filed I.A.No.624 of 2015 under Section 45 of the Indian Evidence Act to send Ex.B.3 gift deed and Ex.A.4 to the expert for comparison of the thumb mark of one Duddela Venkata Subbiah. The trial Court after affording reasonable opportunity to both parties dismissed the petition on merits. Hence the present Civil Revision Petition.

4 It is an admitted fact that the petitioners filed the suit for partition of the suit schedule property. After completion of evidence on both sides, the trial Court posted the matter for arguments. At that stage, the petitioners filed the petition under Section 45 of the Indian Evidence Act to send Ex.B.3 and Ex.A.4 to the expert for comparison of admitted thumb mark of Duddela Venkata Subbaiah on Ex.A.4 with disputed thumb mark on Ex.B.3.

5 It is not in dispute that both Ex.B.3 and Ex.A.4 are registered documents. It is the case of the petitioners that the respondents herein, by impersonation, created Ex.B.3 gift deed. The first plaintiff is none other than the wife of said Duddela Venkata Subbaiah. First plaintiff is the competent person to say whether Ex.B.3 bears the thumb mark of her husband or not. She is also one of the attestors to Ex.B.3. For the reasons best known to the first plaintiff, she did not choose to come into the witness box. P.W.2 was examined to

substantiate the case of the plaintiffs. During the cross examination P.W.2 in unequivocal terms admitted that Ex.B.3 bears thumb mark of Venkata Subbaiah. Unfortunately, the petitioners' own witness negated the contention of the petitioners.

6 In Ex.B.3 the executant's name is shown as Duddela Venkata Subbaiah whereas in Ex.A.4 the name of the executant is shown as Gujjari Venkata Subbaiah. Ex.B.3 bears thumb mark of the executant, whereas Ex.A.4 bears the signature of the executant. This court is unable to understand how the thumb mark will be compared with the signature. Executant is not one and the same in both the documents. If really Ex.B.3 does not bear the thumb mark of the husband of the first plaintiff, what prevented her to file the application till the matter is posted for argument? In view of the admission made by P.W.2, no purpose will be served by sending Ex.B.3 and Ex.A.4 to the expert for comparison and submit report. The trial Court considered all these aspects in right perspective and dismissed the petition. I am fully endorsing with the findings recorded by the trial Court.

7 Having regard to the facts and circumstances of the case, 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. 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: 08.08.2018

Kvsn