

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.846 of 2017

ORDER:

This civil revision petition is filed by the plaintiff, under Article 227 of the Constitution of India, assailing the order dated 25.1.2017 passed in I.A. No.12 of 2017 in O.S.No.124 of 2012 on the file of the Senior Civil Judge Court, Pithapuram.

2. Heard the learned counsel for both the parties.

3. The point that arises for consideration in this revision is:

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

4. A perusal of the record reveals that the petitioner filed O.S.No.124 of 2012 on the file of the Senior Civil Judge Court, Pithapuram against the respondents for partition of the suit schedule property. Basing on the pleadings of both parties, the trial Court framed the issues. At that stage, the petitioner filed I.A.No.12 of 2017 under Order XIV Rule 5 and Section 151 of CPC to frame additional issues. The fifth respondent filed counter *inter alia* contending that the petition is not maintainable under law. The trial Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence, the revision.

5. It is the case of fifth respondent–defendant No.5 that the petitioner is not entitled for the relief of partition of the suit schedule property in view of registered gift deed dated 20.12.2011 and unregistered Wills dated 17.8.2012 and 01.12.2014 said to have been executed in his favour. The petitioner filed the petition to frame additional issues, which are as follows:

- 1) Whether the plaint schedule properties are absolute self acquired properties of first defendant?
- 2) Whether the registered gift deed dated 20.12.2011 said to be executed by first defendant in favour fifth defendant is true, valid and binding on the plaintiff?
- 3) Whether the unregistered Will dated 17.8.2012 said to be executed by first defendant is executed in a sound and disposing state of mind and whether it is his last and final Will?
- 4) Whether the unregistered Will dated 01.12.2014 said to be executed by second defendant is executed in a sound and disposing state of mind and whether it is his last and final Will?

6. It is needless to say that the Court cannot give any finding without an issue. The Court has to decide whether the registered gift deed and unregistered Wills on which the fifth respondent is placing reliance, are legally enforceable or not. In order to adjudicate the suit effectively, thereby to put an end to the litigation, framing of additional issues is inevitable in this case. The trial Court dismissed the petition on the ground that framing of the additional issues amounts to *res judicata*. It is not the case of either of the parties that the suit is hit by *res judicata*. If the impugned order is allowed to stand, it would certainly amount to miscarriage of justice.

7. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

8. In the result, the civil revision petition is allowed, setting aside the order dated 25.1.2017 passed in I.A.No.12 of 2017. Consequently, I.A.No.12 of 2017 in O.S.No.124 of 2012 on the file of the Senior Civil Judge Court, Pithapuram is allowed. The trial Court is hereby directed to frame the additional issues and dispose

of the suit in accordance with law. Miscellaneous petitions, if any,
pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.12.2018
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