

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4724 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 02.06.2018 passed in I.A.No.334 of 2017 in O.S.No.23 of 2015 on the file of the Court of the Principal Junior Civil Judge at Kalwakurthy.

2. Heard the learned counsel for the petitioner and perused the material available on record.

3. A perusal of the record reveals that the respondent filed O.S.No.23 of 2015 on the file of the Court of the Principal Junior Civil Judge at Kalwakurthy seeking perpetual injunction in respect of the suit schedule property. During pendency of the suit, the petitioner filed I.A.No.334 of 2017, under Rule 129 of A.P. Civil Rules of Practice and Circular Orders, 1980 read with Section 151 C.P.C., to call for the file from the Sub-Registrar's Office, Maheshwaram, pertaining to registered gift deed dated 21.07.2005 vide Document No.3430/2005 purported to have been executed by PW.2 in his favour. The respondent filed a counter opposing the claim of the petitioner. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

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

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

5. The respondent filed O.S.No.23 of 2015 against the petitioner seeking perpetual injunction in respect of the suit schedule property. On behalf of the respondent, PW.2 was examined. During the course of cross-examination, PW.2 denied the suggestion that he executed a gift deed in favour of the petitioner. PW.2 denied the photostat copy of the gift deed shown to him. It is not in dispute that PW.2 is not a party to the suit. It is the case of the petitioner that PW.2 executed the gift deed in his favour. In normal course, the gift deed is in the custody of the petitioner alone.

6. At the time of arguments, learned counsel for the petitioner submitted that the gift deed is in the custody of the respondent; therefore, the petitioner was forced to file the present interlocutory application.

7. In order to appreciate the contention of the learned counsel for the petitioner, this Court has carefully scanned the affidavit filed by the petitioner before the trial Court. There is no mention in the affidavit that the gift deed dated 21.07.2005 is in the custody of the respondent. In a suit for perpetual injunction, the plaintiff has to establish that he was in possession of the property as on the date of filing of the suit. The plaintiff may succeed or fail basing on the evidence produced by him. The possibility of filing of this application with an ulterior motive to drag on the proceedings cannot be ruled out completely. Merely because PW.2 denied the suggestion that he executed the gift deed in favour of the petitioner that itself is not a valid ground to call for the gift deed. Even if the gift deed is called for, the same will not throw any light on the

controversy involved in the suit. There is no mention in the affidavit that the property covered under the gift deed dated 21.07.2005 is the subject matter of the suit. 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. There is no illegality, irregularity or impropriety in the order of the trial Court 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. There shall be no order as to costs.

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

Date: 16.08.2018
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T.SUNIL CHOWDARY, J

