

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.5120 and 5124 of 2018

ORDER:

These two Revisions arise out of the same suit O.S.No.435 of 2012 on the file of the I Additional Junior Civil Judge, Chittoor and they are being disposed of by this common order.

2. The petitioners in the both the Revisions are defendants in the suit.

3. The respondent/plaintiff filed the suit for permanent injunction against petitioners.

4. The basis of the claim of respondent is a Will dt.20-06-2008 executed allegedly by one G.Munirathnamma in respondent's favour bequeathing the plaint schedule property to him. The said Munirathnamma is said to be his paternal aunt.

5. The petitioners filed written statement disputing the title of Munirathnamma. They also denied the relationship of said Munirathnamma with respondent apart from contending that the said Will is a forgery.

6. Issues were framed and trial concluded on 17-07-2018 and matter was posted for arguments.

7. At that stage, the petitioners filed I.A.No.445 of 2018 to reopen the suit to examine one more witness, and I.A.No.446 of 2018 to issue

witness summons to the Executive Officer of Kanipakam Devasthanam to produce proceedings relating to one Galla Satyanarayana, who is alleged to be the son of said Munirathnamma and who is said to have worked as Chairman of the Trust Board of Kanipakam Devasthanam.

8. It appears to be the contention of the petitioners that P.W.1 admitted in cross-examination that Galla Satyanarayana is the son of Munirathnamma though it is the case of respondent that Munirathnamma had no children and so she executed a Will on 20-06-2008 in favour of respondent.

9. Counter-affidavit was filed by respondent opposing the said applications stating that examination of Executive Officer of Kanipaka Devasthanam would not serve any purpose; that there is no documentary evidence produced by petitioners with regard to their possession and enjoyment of the property and petitions are vexatious in nature.

10. By separate orders dt.06-08-2018, the Court below dismissed both the applications. It held that opportunity was given to the petitioners to lead evidence from 30-11-2016 to 17-07-2018 but no steps were taken by petitioners during this period to issue witness summons to the proposed party and when the main suit was at the stage of arguments, these petitions are filed to drag on the matter. It further held that the suit being only for permanent injunction, but not

for declaration of title, the question whether Galla Satyanarayana was alive or not at the time of filing of suit, is not relevant to decide the suit.

11. Assailing the same, these Revisions are filed.

12. Learned counsel for petitioners contended that the evidence of the proposed witness is critical in order to establish whether Munirathnamma had a son or not and failure of the lower Court to allow these applications causes grave prejudice to the petitioners.

13. I am unable to agree with this submission. Assuming that Galla Satyanarayana is the son of Munirathnamma, nothing prevented Munirathnamma to execute a Will giving property to respondent, if she so desired. Therefore, the real question in the suit is whether the Will pleaded by respondent is genuine or not, which has to be gone into by the Court below. Examining the Executive Officer of Kanipakam Devasthanam to produce proceedings of appointing Galla Satyanarayana as Chairman of the said Devasthanam would be of no avail in deciding the suit. In any event, the petitioners, having had adequate opportunity between 30-11-2016 to 17-07-2018, when it was their turn to lead evidence, cannot file these applications at the stage when the matter is posted for arguments. It appears that these applications are only filed to drag on the proceedings and to delay the disposal of the suit.

14. Therefore, I find no merit in these Revisions and they are accordingly dismissed at the stage of admission. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-09-2018

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