

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.3159 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 15.03.2016 passed in I.A.No.1059 of 2015 in O.S.No.144 of 2009 on the file of I Additional District Court, Nellore.

2. Heard the learned counsel appearing for both the parties and perused the material available on record.

3. The facts leading to filing of the present revision petition, in brief, are as follows:

The petitioner filed O.S.No.144 of 2009 on the file of I Additional District Court, Nellore, against the respondents for declaration to declare the sale deed dated 22.08.2009 as void. During pendency of the suit, the respondents filed I.A.No.1059 of 2015 under Section 65 of the Indian Evidence Act to mark the zerox copy of the notarized GPA dated 15.04.1995 as secondary evidence. The petitioner filed counter inter alia contending that GPA dated 15.04.1995 is not in existence; therefore, the petition is liable to be dismissed. The trial Court after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. The point that arises for consideration is: 'Whether there is any illegality, irregularity or impropriety in the impugned order?'

5. The petitioner is the plaintiff and the respondents are defendants in O.S.No.144 of 2009. Before filing of I.A.No.1059 of 2015, the respondents got issued a legal notice dated 03.12.2015 to the petitioner directing him to produce the GPA. The petitioner filed a counter contending that the alleged GPA dated 15.04.1995 is not in existence; therefore, the question of production of the same does not arise. After compliance of the procedure as contemplated under Section 66 of the Indian Evidence Act, the respondents filed the present application.

6. To substantiate the arguments, learned counsel for the petitioner drawn the attention of this Court to the decision in **Keshava Reddy Vs. Bal Reddy**¹ wherein it was held at paragraph No.9 as follows:

“According to this Section, a person holding secondary evidence has to give notice to the party in whose possession such document is in existence. So, before invoking this provision, the party who wants to rely on this section should first establish as to the existence of such a document then only issue of notice, as required under Section 66 would arise. Here, when D1 specifically pleaded that there is no such document in existence and that he is not in possession of any such document, without producing any material as to existence and possession of such document, defendants No.4 to 10 i.e., respondents No.1 to 7 have invoked Section 66 and the trial Court without looking into the provisions, passed order on the ground that no prejudice would be caused to the opposite party. On scrutiny of record, I am of the view that approach of lower court is not correct. The court below is expected to first satisfy as to the existence of the document to invoke Section 66 of the Act.”

¹ 2016(2) ALT 219

7. Let me consider the facts of the case on hand in the light of the above legal principle.

8. Right from the beginning, the contention of the petitioner is that the alleged GPA dated 15.04.1995 is not in existence. He further contended that the respondents created the GPA dated 15.04.1995 fraudulently. In order to allow the petition filed under Section 65 of the Indian Evidence Act, the Court has to record a specific finding with regard to the following two aspects: (1) the existence of document in question; and (2) the said document was in possession of the opposite party.

9. This Court carefully perused para 10 of the impugned order. The trial Court has not given any specific finding with regard to the existence or non-existence of GPA dated 15.04.1995. The trial Court made an observation that the existence of GPA and its genuineness will be decided in the main suit. This finding of the trial Court is contrary to Section 65 of the Indian Evidence Act. The trial Court allowed the petition without taking into consideration the scope of Section 65 of the Indian Evidence Act. The facts of the case on hand are almost identical to the facts of the case cited supra.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of a considered view that it is a fit case to set aside the impugned order and remand the matter to the trial Court for fresh disposal.

11. In the result, the Civil Revision Petition is allowed setting aside the order dated 15.03.2016 in I.A.No.1059 of 2015 in O.S.No.144 of 2009 and the matter is remanded to the trial Court. The learned I Additional District Judge, Nellore, is hereby directed to dispose of I.A.No.1059 of 2015 in O.S.No.144 of 2009, afresh, in the light of Section 65 of the Indian Evidence Act. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

29.11.2018
Rns

T.SUNIL CHOWDARY, J



