

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.359 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 24.11.2015 passed in I.A.No.670 of 2015 in O.S.No.111 of 2006 on the file of the Court of the Principal Junior Civil Judge, Piler.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows:

The respondent filed O.S.No.111 of 2006 on the file of the Court of the Principal Junior Civil Judge, Piler, against the petitioners for declaration and consequential perpetual injunction. During pendency of the suit, the respondent filed I.A.No.670 of 2015 to reopen the matter. The respondent also filed I.A.No.671 of 2015 to issue summons to the witness and I.A.No.672 of 2015 to recall PW.3. The petitioners filed counter *inter alia* contending that the petition filed by the respondent to reopen the matter is not maintainable either on facts or in law. 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. A perusal of the record reveals that the respondent filed O.S.No.111 of 2006 for declaration and consequential perpetual

injunction in respect of the suit schedule property. During pendency of the suit, the respondent marked Ex.A.15-certified copy of the Will. During pendency of the suit, the respondent filed original of Ex.A.15. It is a settled principle of law that a duty is cast on the propounder of the Will to dispel the suspicious circumstances surrounding the execution of the Will by examining one of the attestors of the Will. For one reason or other, the respondent could not examine the attestor of original of Ex.A.15-Will. If the petition is dismissed, it may not be possible for the respondent to prove the execution of the Will. Even if the petition is allowed, the same may not cause any prejudice to the petitioners. The trial Court, after taking into consideration the facts and circumstances of the case, allowed the petition to reopen the matter on payment of costs of Rs.2,000/- to the petitioners.

6. The trial Court has assigned reasons much less cogent and valid reasons to its findings. It is a settled principle of law that this Court shall not lightly interfere with the discretionary orders passed by the trial Court. The trial Court exercised its discretionary power judiciously. Viewed from any angle, this Court is of the considered view that it is not a fit case to interfere with the same. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

7. At the time of arguments, learned counsel for the petitioners submitted that the respondent has not paid costs of Rs.2,000/- to the petitioners.

8. In the result, the Civil Revision Petition is dismissed. The respondent is directed to pay an amount of Rs.3,000/- (Rupees three thousand only) instead of Rs.2,000/- to the petitioners towards costs before examination of PW.3. After examination of PW.3 and the independent witness, the petitioners are permitted to adduce further evidence, if so advised. There shall be no order as to costs.

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

Date: 03.12.2018
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T.SUNIL CHOWDARY, J

