

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.7337 OF 2017

O R D E R

This revision is filed against the order and decree dated 08.11.2017 passed by the court of II Additional District Judge, West Godavari, Euru, in I.A.No.1182 of 2017 in O.S.No.23 of 2010, wherein and whereby, the application filed by the 2<sup>nd</sup> defendant in the suit, under Section 45 of the Indian Evidence, Act, 1872, seeking to send Exs.B-9 and A-13, which are registered sale deed and deed of cancellation, to an expert for opinion on the contemporaneous signatures of the plaintiff on the said documents; was dismissed.

The 1<sup>st</sup> respondent herein is the plaintiff. Revision petitioner and 2<sup>nd</sup> respondent herein, are defendants 1 and 2 in the suit. The plaintiff filed the suit in O.S.No.23 of 2010 on the file of II Additional District Judge, West Godavari, Euru to declare the sale deed dated 07.04.2009 executed by the 1<sup>st</sup> defendant (D-1), as a General Power of Attorney (G.P.A.) holder of the plaintiff, in favour of the 2<sup>nd</sup> defendant (D-2), as null and void and not binding on the plaintiff and to direct the defendants to put the plaintiff in actual possession and enjoyment of plaint schedule property. The plaintiff also sought for damages for use and occupation of the suit schedule property.

The case of the plaintiff is that he cancelled the G.P.A. in favour of D-1, by executing a registered deed of cancellation dated 16.02.2009, shown as Ex.A-13 in the list of documents filed along with the plaint. Therefore, the sale deed executed by D-1 on 07.04.2009, in favour of D-2, as G.P.A. holder of plaintiff, is null and void.

Pending trial, 2<sup>nd</sup> defendant has come up with the present I.A. claiming that plaintiff accompanied D-1 to the Registrar Office, Vatluru on 07.04.2009 and signed on Form 32-A, which is appended to sale deed dated 07.04.2009, in his presence and also in the presence of attestors, and the 1<sup>st</sup> defendant executed sale deed in his favour, as GPA holder of the plaintiff, after receiving the sale consideration. As the plaintiff is now seeking cancellation of sale deed dated 07.04.2009, in view of the above circumstances, and the plaintiff is also denying his signatures in form No.32, the present application is filed seeking opinion of an expert.

By the impugned order, the trial court dismissed the I.A. holding that the opinion of an expert is not conclusive and the said evidence of expert has to be corroborated by other evidence, and that even for argument sake, the contention of the D-2 is upheld, whether that authorizes D-1 to execute sale deed dated 07.04.2009 in favour D-2, in view of execution of registered deed of cancellation dated 16.02.2009, has to be decided based on evidence.

Aggrieved by the impugned order, the 2<sup>nd</sup> defendant in the suit filed the present revision.

This court on 01.02.2018 ordered notice before admission and permitted the learned counsel for the petitioner to serve personal notice on respondents and granted limited interim stay. This court felt that interlocutory application is filed belatedly and for no fault of 1<sup>st</sup> respondent, he is forced to defend this revision and I.A., directed petitioner to pay Rs.10,000/- to 1<sup>st</sup> respondent / plaintiff.

Learned counsel for the petitioner filed proof of service on 08.03.2018 and also memo dated 15.02.2018 showing that as per direction, petitioner paid an amount of Rs.10,000/- to the counsel for the

1<sup>st</sup> respondent/plaintiff in the court below and the said counsel acknowledged that he received the said amount on behalf of the 1<sup>st</sup> respondent / plaintiff.

Today, when the matter is taken up for hearing, there is no representation for the 1<sup>st</sup> respondent, despite service of notice. Therefore, this court has taken up the revision for disposal on merits.

Learned counsel for the petitioner, reiterating the case of the petitioner in the affidavit filed in support of the I.A. before the trial court, submits that 1<sup>st</sup> respondent / plaintiff, is aware of the sale transaction executed by D-1 in favour of D-2, as GPA holder of the plaintiff, since on the date of execution of sale deed, he accompanied the 1<sup>st</sup> defendant to Registrar Office, Vatluru and signed on form No.32-A appended to the sale deed, in the presence of petitioner / D-2, and in the presence of attestors and, thereafter, D-1, after receiving sale consideration, executed sale deed. In view of these circumstances, D-2 is under *bona fide* impression that there is valid GPA in favour of D-1 to execute sale deed in his favour, and in view of this conduct of the plaintiff, he cannot now seek for cancellation of sale deed executed by D-1 in his favour. To prove that plaintiff had knowledge of execution of sale deed by D-1 in favor of D-2, as his GPA holder and that he signed on form No.32 in Ex.B-9, D-2 is seeking to send the signatures of plaintiff on form No.32 in Ex.B-9 original sale deed, for comparison with the original of Ex.A-13 deed of cancellation of GPA executed by the plaintiff. The learned counsel further submits that no prejudice would be caused to the plaintiff and that opinion of an expert, will assist the court, to come to a just conclusion with regard to conduct of the parties. Therefore, the learned counsel seeks to allow the present I.A.

From the material on record it could be seen that the petitioner is claiming that D-1 executed sale deed in his favour as GPA holder of the plaintiff and he also claims that plaintiff signed in form 32-A, which is appended to Ex.B-9 sale deed dated 7.4.2009, in his presence and also in the presence of attestors. On the other hand, the plaintiff is claiming that he cancelled GPA executed by him in favour of D-1, by executing registered deed of cancellation dated 16.02.2009 and hence the sale deed executed by D-1 in favour of D-2 on 07.04.2009, is not valid and that D-1 has no capacity to execute the sale deed.

The scope of the suit, as found by the trial court, would be (1) whether the plaintiff is absolute owner; (2) whether he had cancelled GPA given to D-1 as per procedure and; (3) whether any rights would accrue to D-2. In the present case, the claim of D-2 is that plaintiff accompanied D-1 for registration and also signed in Form No.32, and this has made him to believe that D-1 is the GPA holder of the plaintiff. In the suit, the plaintiff is seeking to cancel the said sale deed. In the counter filed to the present I.A., the plaintiff is denying that he accompanied D-1 for registration and that he signed in Form No.32. In these circumstances, to arrive at a just finding with regard to conduct of the parties and whether D-2 is a *bona fide* purchaser, and as alleged by D-2, whether the plaintiff had knowledge of the transaction having taken part in it; all these issues may have bearing during the trial of the suit and would assist the court, along with other evidence, in coming to a just conclusion with regard to the claims of the respective parties. Moreover, the plaintiff who filed counter affidavit before the trial court, could not demonstrate that any prejudice would be caused to him, in calling for the opinion of an expert. In these circumstances, the court below ought to have allowed the present I.A., since the relevancy or otherwise of above circumstances, can be decided during the final disposal of the suit.

For the foregoing reasons, the impugned order is set aside and the revision is allowed and consequently I.A.No.1182 of 2017 in O.S.No.23 of 2010 on the file of II Additional District Judge, West Godavari, Eluru, is allowed.

As the suit is of the year 2010, the trial court is directed to call for the opinion of the expert, as expeditiously as possible, and dispose of the suit in accordance with law, within a period of four months from the date of receipt of a copy of this order, on its own merits, uninfluenced by any observation made in this order. The parties shall co-operate with the trial of the suit for its disposal within the time stipulated.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.



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A.RAJASHEKER REDDY,J

DATE:12—03—2018

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