

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.6750 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 03.10.2017 passed by the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.265 of 2017 in O.S.No.896 of 2008. The said I.A. was filed by the petitioner herein, the first defendant in the suit, under Section 151 CPC to reopen the case for sending the original will, relied upon by him, to an expert for comparison of signatures. By the order under revision, the trial Court dismissed the I.A.

Heard Sri V.Ramesh Reddy, learned counsel for the petitioner/ first defendant, and Sri G.Umesh, learned counsel representing Sri R.Dheeraj Singh, learned counsel for the first respondent/plaintiff.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.896 of 2008 was filed for partition and allotment of the plaintiff's 1/7th share in the suit schedule property by metes and bounds. The first and second defendants are the brothers of the plaintiff, while the third to fifth defendants are their sisters. They, and the mother of the sixth defendant, are the progeny of late Rajamallaiah, who was the owner and possessor of the suit schedule property. He purchased the same under registered sale deed dated 27.11.1974 and constructed a house with his own earnings. He died on 13.03.1998 and his wife died on 13.12.2001. The plaintiff claimed that after their death, he and the defendants jointly inherited the suit property and were deemed to be in joint possession. While so, the first defendant got filed a perpetual injunction suit against the plaintiff, in O.S.No.1744 of 2003 before the learned Principal Junior

Civil Judge, Ranga Reddy District at L.B.Nagar. Therein, he claimed that an unregistered Will was executed by late Rajamallaiah bequeathing the entire suit schedule property to him. This was the cause for filing the present partition suit.

Be it noted, this suit was filed as long back as in May, 2008.

The first defendant filed the subject I.A. in 2017 under Section 151 CPC to reopen the suit for sending the unregistered Will, under which he was claiming absolute rights, to a handwriting expert for comparison of the signature therein with admitted signatures of late Rajamallaiah. In the affidavit filed in support of the I.A., the first defendant admitted that after examination of the plaintiff as P.W.1 and his own examination as D.W.1, the case was posted for arguments. He stated that as the plaintiff was alleging that the signature of their father on the unregistered Will was forged and fabricated, it was necessary to compare the same with the admitted signature of their father in the sanctioned plan, which was available with him. He claimed that a receipt containing the signature of their father was also available for such comparison. The plaintiff contested this I.A. by pointing out that it had been filed only at the stage of arguments, after both parties had led evidence in support of their respective stands. He asserted that there were no acceptable signatures of late Rajamallaiah, as he did not admit that Exs.B2 and B4, filed by the first defendant, contained their father's signatures.

The trial Court observed that the subject I.A. was filed when the matter was coming up for arguments. Further, taking note of the objection of the plaintiff that there were no admitted signatures of the deceased, the trial Court dismissed the I.A. holding it to be devoid of merit and, also, to avoid delay.

Significantly, the affidavit filed in support of the I.A. did not even disclose any reason or explanation for the delay on the part of the first defendant in seeking expert examination of the disputed signature in the Will. The suit plaint reflects that the plaintiff categorically asserted therein that the first defendant had created the alleged Will, under which he was falsely claiming sole rights. The first defendant therefore had full knowledge of this aspect of the matter right from the start.

The suit is of the year 2008, while the subject I.A. was filed only in February, 2017. That apart, when the plaintiff disputes the signatures in the documents that the first defendant seeks to rely upon, there is no purpose served in resorting to this exercise. Copies of the sanctioned plan and the receipt that the first defendant wished to press into service are placed on record. As these documents are not authenticated documents, akin to registered documents, reliance cannot be placed on them. In any event, as the first defendant chose to sleep over the matter for all these years, despite being well aware of what was at stake in the suit, his attempt to now seek expert examination of the disputed signature in the Will is lacking in *bonafides* and clearly manifests delaying tactics. This Court therefore finds no grounds to interfere with the order under revision.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

19th JANUARY, 2018

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SANJAY KUMAR, J