

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1014 of 2019

ORDER :

This Revision is filed challenging the order dt.14-02-2019 in I.A.No.1064 of 2017 in O.S.No.88 of 2012 of the II Additional District Judge at Warangal.

2. Petitioner herein is 1st defendant in the suit.
3. The respondent herein filed the suit O.S.No.92 of 2012 for declaration of her title to the suit schedule property and for a perpetual injunction restraining the petitioner and others defendants from interfering with her possession and enjoyment of the suit schedule property. She claimed that she was the daughter of Thoutam Ramaswamy, and contended that her father had gifted her the suit schedule property under registered gift deed No.1448 of 2009 dt.03-04-2009 and petitioner and other defendants were trying to grab the said property.
4. Written statement was filed by petitioner opposing the suit
5. Respondent/plaintiff had filed I.A.No.432 of 2014 stating that she was suffering from ailments and was unable to come to Court to give evidence and she should be permitted to lead evidence through her husband Ashok Kumar since he has sufficient knowledge about the affairs of the suit schedule property.

6. The petitioner reported no objection to the said application and it was allowed on 12-06-2014 on payment of costs of Rs.200/-. Later the respondent examined her husband by following due procedure.

7. In October, 2017, petitioner and other defendants filed I.A.No.1064 of 2017 stating that they had earlier filed another suit against respondent i.e. O.S.No.87 of 2012; that the said suit is being tried along with the instant suit O.S.No.88 of 2012; that they came to know that respondent is employed in N.I.T., Warangal as Senior Assistant; and she got appointed in the said Institution on compassionate grounds as a widow. It is also alleged that she was drawing pension as widow in addition to her monthly salary and therefore the said Ashok Kumar might not be her husband. They contended that if the suit is proceeded without confirming the identity of respondent, time of the Court would be wasted and so the Court should summon the respondent to depose before the Court about her identity.

8. Counter-affidavit was filed by respondent opposing the said application. It is stated that her husband had been examined as P.W.1 in O.S.No.88 of 2012 after due permission by filing petition under Section 120 of the Evidence Act. She contended that at the present juncture the petitioner cannot dispute the status of the said Ashok Kumar as her husband. She stated that she was earlier a widow, but she later married Ashok Kumar after getting employment in N.I.T., Warangal since there is no bar of second marriage and mere non-

mentioning about it in the suit, is not fatal because the suit related to immoveable property which is her property. She stated that she is confirming that Ashok Kumar is her husband and there is no cloud cast upon with her relationship with the said Ashok Kumar.

9. By order dt.14-02-2019, the Court below dismissed the said application. It held that petitioners had not objected to the respondent giving evidence through her husband Ashok Kumar in I.A.No.432 of 2014; that petitioners have no *locus standi* to question the relationship of respondent with the said Ashok Kumar, who was examined P.W.1; and there is no issue framed on the marital status of respondent or on the question whether P.W.1 is her husband or not.

10. It also stated that in the title document Ex.A-1 filed by respondent, it was mentioned that P.W.1 was her husband, and the cause title in the plaint also shows the same, and there was no pleading in the written statement of the petitioners disputing the identity of respondent or that of her husband.

11. Assailing the same, this Revision is filed.

12. Learned counsel for petitioner contended that the Court below ought to have allowed I.A.No.1064 of 2017 in view of certain documents obtained under Right to Information Act by petitioners, one of which is a letter dt.23-02-2017 stating that respondent was employed in N.I.T. and she was the daughter of Toutam Ramaswamy and she had secured employment as widow of her late husband

Venkateswarlu. He also contended that there is a serious doubt as to whether respondent is the same person who is employed in N.I.T., Warangal since in the plaint it was mentioned that her occupation was household and that she was married.

13. I am unable to agree with the said contention for the reason that in the written statement filed in O.S.No.88 of 2012, petitioner himself stated that respondent was married and that her husband was 1st defendant in O.S.No.87 of 2012, which was being tried along with the instant suit O.S.No.88 of 2012.

14. Also, when the respondent filed I.A.No.432 of 2014 to permit her husband to give evidence on her behalf, petitioner and other defendants had reported no objection, and the said application was allowed on 12-06-2014 and thereafter the husband of respondent had deposed as P.W.1.

15. As rightly held by the Court below, the suit is filed for declaration of title of immoveable property, and the marital status of respondent is not in issue and there is no pleading in the written statement of petitioners disputing the identity of the respondent or that of her husband.

16. In these circumstances, I see no reason why petitioner should want the respondent to be called as a witness to prove her identity.

17. Accordingly, the Civil Revision Petition fails and is dismissed.

No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-06-2019

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