

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.6085 & 6091 of 2018

COMMON ORDER:

Heard the learned counsel for the petitioner and Sri Y.Ashok Raj, learned counsel for the respondents.

2. These two Revision Petitions arise out of the same suit between the same parties. Therefore, they are being disposed of by this common order.

3. The petitioner in both these Revision Petitions is the plaintiff No.1 in O.S.No.107 of 2013 on the file of the II Additional District Judge, Karimnagar District.

4. She filed the said suit for partition and separate possession of 1/5th share to herself and 1/20th share to plaintiff Nos.2 to 5 in the suit schedule properties. The 1st respondent is the 1st defendant in the suit and he is the father of the 1st petitioner and 2nd respondent/2nd defendant. Respondent Nos.3 and 4 are the children of another brother of the 1st petitioner. The 1st respondent filed Written Statement which was adopted by respondent Nos.2 to 4 opposing the case of the plaintiff. Later plaintiff Nos.2 to 5 withdrew the suit.

5. When the suit was coming up for further evidence by the petitioner, after her examination as P.W.1 and after marking Ex.A-1 to A-7, petitioner filed I.A.No.306 of 2018 under Order 7 Rule 14 (3) CPC for receiving document dt.10-05-1961 between the 1st respondent

and his brothers, in which according to her, there was a partition and allotment of shares. She also filed I.A.No.307 of 2018 under Section 151 CPC to recall P.W.1 for the purpose of marking the said document.

6. She contended that the custody of the said document was with one Jalapathi Reddy, brother of the 1st respondent and after his death, it was in the custody of the son of Jalapathi Reddy by name Satyanarayana Reddy, that she came to know that the said document is with the said Satyanarayana Reddy and requested him to handover the same, and that is why she could not file along with the plaint.

7. The respondents filed a counter opposing the same stating that at the time of filing of the suit, photo copy of the partition deed was filed, but the original was not filed and in fact, there was no partition of that nature as alleged by the petitioner. They also contended that the document is not a registered document and requires registration and is inadmissible in evidence.

8. By order dt.26-04-2018, the Court below dismissed both the applications. It held that the documents sought to be filed by the petitioner is an unregistered and unstamped partition deed and is inadmissible in evidence. Consequently, there is no necessity to receive it or to recall P.W.1 for further examination. It also observed that petitioner did not properly explain the delay in filing the document.

9. Assailing the same, these two Revision Petitions are filed by the petitioner.

10. Learned counsel for the petitioner contended that at the time of receiving document in the suit, the Court ought not to have gone into its admissibility, and since satisfactory reason had been given for not filing the said document along with the plaint, the Court below ought to have allowed the I.A.Nos.306 and 307 of 2018.

11. Learned counsel for the respondents supported the order passed by the Court below.

12. The application filed by the petitioner was under Order 7 Rule 14 (3) CPC to receive document dt.10-05-1961 alleged to be a partition deed. At the stage of receiving documents, the Court below ought not to have gone into the admissibility of the said document since only after receiving the document, the question of admissibility can be looked into when a witness seeks to mark the said document. Also the reason given by the Court below that petitioner has not properly explained the delay in filing the document cannot be countenanced since valid reason has been given by the petitioner in the affidavit filed in support of the application in I.A.No.307 of 2018 i.e. the custody of the document is not with her and is with the son of 1st respondent's brother Jalapathi Reddy by name Satyanarayana Reddy and that she had recently come to know that she had custody of the said document.

13. In that view of the matter, the Order dt.26-04-2018 in I.A.No.306 of 2018 is set aside; the said I.A. is allowed; and the Court below is directed to receive the document sought to be filed by the petitioner and consequently, order dt.26-04-2018 in I.A.No.307 of 2018 is also set aside and the said I.A. is also allowed and the Court below is directed to recall P.W.1 to mark the said document in evidence. However, the question of admissibility of the document is left open to be decided by the Court below at the time when P.W.1 seeks to mark the said document in evidence after hearing both sides.

14. Accordingly, both the Civil Revision Petitions are allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-01-2019
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