

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.6266 of 2018

ORDER :

This Civil Revision Petition is filed assailing the order dt.03.10.2018 passed in I.A.No.552 of 2018 in O.S.No.227 of 2012 on the file of the Senior Civil Judge, Nizamabad.

2. The petitioner herein is defendant in the above suit, and the respondent herein is 1st plaintiff in the above suit.

3. The respondent and her son, 2nd plaintiff, filed the suit against the petitioner, who is the widow of another son of the respondent, for partition of the plaint schedule property, and for 1/3rd share therein.

4. The petitioner filed written statement stating that her husband had executed a Will bequeathing the plaint schedule property to her and she is the absolute owner thereof, and the property cannot therefore be partitioned.

5. After issues were framed and trial concluded, the respondent filed I.A.No.552 of 2018 alleging that the signature of her deceased-son on the Will Deed set up by petitioner is not genuine and was forged by her; that the husband of respondent had been in service in DENA Bank, and he died on 16.06.2000, and the petitioner's husband had given a letter on 20.04.2001 to the Branch Manager, Dena Bank, Nizamabad stating that he has no objection for giving the job of his father to 2nd plaintiff on compassionate grounds; that the said letter

dt.20.04.2001 of the petitioner's husband given to the Dena Bank contains the actual signature of petitioner's husband and it would be in the Head Office of the said Bank at Mumbai; and that an Advocate-Commissioner be appointed to examine the Deputy General Manager of the Dena Bank, Mumbai to record his statement and also obtain the letter dt.20.04.2001 by the petitioner's husband.

6. Another I.A.No.551 of 2018 was also filed to re-open further evidence on behalf of respondent.

7. By a Docket order dt.03.10.2018, both the I.A.s were allowed.

8. In the order dt.03.10.2018 in I.A.No.551 of 2018, the Court below did not assign any reason why it is re-opening the further evidence on the part of petitioner and why it is appointing an Advocate-Commissioner to record the evidence of the Deputy General Manager, H.R. Department, Dena Bank, Mumbai as sought by the respondent.

9. The counsel for petitioner contended that the absence of reasons in the impugned order causes grave prejudice to petitioner, and at the stage when the evidence of both parties had been closed such requests could not have been entertained by the Court below.

10. On the other hand, the counsel for respondent refuted the above contentions and pointed out that the order passed in I.A.No.551 of 2018 to re-open the evidence of respondent had not been challenged by the petitioner and she had, in fact, not even objected to the same;

and even in I.A.No.552 of 2018, the petitioner's counsel did not file any counter.

11. It is important to note that the suit is one for partition and the petitioner raised the defence, relying on the Will of her husband, in the Written Statement filed by her in the suit in the year 2013 itself. If the respondent and the other plaintiff wanted to lead evidence to disprove the Will they should have taken steps much before the trial commenced, and they cannot be allowed to re-open evidence after the trial concluded.

12. It may be that the counsel for petitioner did not file a counter, but he also did not agree for both the I.A.s to be allowed.

13. Therefore, without furnishing any reasons, the Court below should not have allowed both the I.A.Nos.551 and 552 of 2018. The Court below ought to have seen that the respondent had adopted a very casual approach and was negligent in leading evidence on her plea that the Will set-up by petitioner was a forgery, and at the stage when the matter was to be heard by the Court below, such plea could not have been entertained.

14. Therefore, the Civil Revision Petition is allowed. The order dt.03.10.2018 passed in I.A.No.552 of 2018 in O.S.No.227 of 2012 on the file of the Senior Civil Judge, Nizamabad is set aside; and I.A.No.552 is dismissed. No order as to costs.

15. The interim order granted on 26.10.2018 in I.A.No.1 of 2018 in CRP.No.6266 of 2018 shall stand vacated.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.02.2019

Ndr/*

