

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

CRP.No.7228 of 2018

O R D E R:

Heard counsel for petitioner, Sri T.P.Acharya, Counsel appearing for 1st respondent, Sri T.Rajashekar, Counsel appearing for 2nd respondent, Sri S.Sreedhar, Counsel appearing for 3rd respondent, and Sri Manu, counsel appearing for respondents 5 to 7.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20.11.2018 in I.A.No.339 of 2018 in O.S.No.31 of 2012 of the IX Additional District Judge, Wanaparthy.

3. The Court below by the impugned order refused to permit the petitioner/5th defendant in the said suit, to mark a Will allegedly executed by the deceased-4th defendant on 22.11.2015 on the ground that the 4th defendant, who is his mother, died on 31.01.2016.

4. It is the contention of the respondents in the Revision that the said Will sought to be submitted by the petitioner is a fabricated one and it is not executed by the 4th respondent.

5. In the impugned order, the Court below rejected the application filed under Order VIII Rule 1A(3) CPC by the

petitioner on the ground that there is no pleading regarding the Will dt.22.11.2015 and so it cannot be introduced in the evidence six years after the institution of the suit.

6. This view, in my opinion, is perverse because the executant of the Will was alive when the suit was filed in 2012; and when she is alive, there is no occasion to mention about the alleged Will dt.22.11.2015 said to have been executed by her.

7. Further, whether the said Will is valid in law or whether it is a fabricated one, is to be gone into during trial; and merely because the respondents denied the validity of the said Will and call it a fabricated one, the Court below cannot refuse to receive it, when it is sought to be submitted by the petitioner.

8. Therefore, this Civil Revision Petition is allowed; the order dt.20.11.2018 in I.A.No.339 of 2018 in O.S.No.31 of 2012 of the IX Additional District Judge, Wanaparthi, is set aside; and the said I.A., is allowed. However, the validity of the said Will is left open to be proved during the course of trial by the parties, after taking appropriate pleadings in that regard, and the Court below shall expedite the disposal of the suit. No order as to costs.

9. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

30th April, 2019.

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