

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

C.R.P.No.7423 of 2018

ORDER:

Heard the learned counsel for the petitioner.

2. This Revision Petition is filed assailing the order dt.31-10-2018 in I.A.No.1372 of 2018 in O.S.No.162 of 2015 of the XXVII Additional Chief Judge, City Civil Court, Secunderabad.

3. Petitioner herein is the plaintiff in the suit.

4. He filed the suit for recovery of possession of the plaint schedule property and to declare the sale deed dt.25-10-2012 as null and void and also mesne profits. In the suit, the petitioner pleaded that the plaint schedule property consisting of ground and first floor standing in 406 sq yds and site was purchased by her through registered sale deed dt.11-04-1985 from her vendor Sri Shankar; that they had inducted 4th defendant as a tenant in the property, but when they went to the premises on 07-01-2013, it was discovered that it was in possession of 2nd defendant who had no authority to be in possession of the said property. It is also contended that 2nd defendant informed the petitioner that he purchased the property from the 4th defendant under a registered sale deed dt.25-10-2012 and that the said sale deed is not valid.

5. Written Statement was filed by respondents opposing the suit claim. They also contended that one Smt. Susheela was the owner of the first floor of the suit schedule property.

6. Thereafter, trial commenced and the petitioner, in her chief examination affidavit of evidence, stated that by way of family adjustment, she gets the first floor registered in favour of said Susheela and that the latter subsequently executed Will dt.22-01-2004 bequeathing the same property to her; that the said Will was not filed into Court; and therefore she wants to file the said Will and it should be received in evidence.

7. The petitioner filed I.A.No.1372 of 2018 making the said prayer invoking Order VII Rule 14 (3) CPC.

8. Respondent Nos.1 to 3 opposed the said application. They pointed out that there was no mention in the plaint about the sale deed executed by the petitioner in favour of Smt. Susheela and the subsequent execution of the Will dt.22-01-2004 in favour of the petitioner by Smt. Susheela. They also alleged that the said Will is a fabricated and bogus one with forged signature of the deceased Susheela.

9. By order dt.31-10-2018, the Court below dismissed I.A.No.1372 of 2018.

10. The Court below held that the suit was filed for declaration of title and recovery of possession, that the petitioner as

P.W.1 admitted in cross examination that she did not mention in the plaint that Susheela, who is her mother-in-law, executed the Will dt.22-01-2004 for the first floor in her favour; that if the said Will is filed, the whole case will change and new pleadings will come on behalf of both parties. It therefore held that proper reasons were not given for not filing of the Will, which is more than 14 year old document along with the plaint, though the suit had been pending for almost three years.

11. Assailing the same, this Civil Revision Petition is filed.

12. Learned counsel for the petitioner contended that the Court below was under erroneous impression that the suit is one for declaration and re-conveyance of possession and that the prayer for declaration of title is not there in the plaint. Though this contention is correct, the recovery of possession sought by the petitioner was on the basis of title claimed by the petitioner under registered sale deed dt.11-04-1985 obtained from her vendor.

13. Under Order VII Rule 14 CPC introduced by Act 46 of 1999 w.e.f. 01-07-2002, a plaintiff, who sues upon a document and relies upon a document in his possession or power in support of his claim, should produce it in the Court when the plaint is presented by him.

14. In the instant case, the petitioner had neither pleaded about Will dt.22-01-2004 nor had filed it along with plaint. Under

Sub Rule (3) of Order VII Rule 14, leave of the Court will have to be obtained for production of documents by the plaintiff which had not been filed along with the plaint. The said provision has been considered in **Bada Bodaiah and another Vs. Bada Lingaswamy and others**¹ wherein this Court has held that Order VII Rule 14 (3) is an exception to Order VII Rule 14 (1) and the power to grant leave must be exercised in rare cases and not in routine manner.

15. In the instant case, no valid reason is assigned by the petitioner for not filing the said Will along with plaint and she cannot take the plea that because of the pleading in the Written Statement, she is forced to file Will.

16. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

17. Accordingly, the Civil Revision Petition fails and is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-02-2019
kvr

¹ 2003 (1) ALD 790