

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

C.R.P.No.7661 of 2018

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.06.12.2018 in I.A.No.1996 of 2018 in O.S.No.151 of 2012 of the XII Additional Chief Judge, City Civil Court, Secunderabad.

2. Petitioner is the plaintiff in the above suit. The said suit was filed for partition of the plaint schedule property into two shares and for allotment of one such share to the petitioner.

3. 1st respondent is the 1st defendant in the said suit and he is the brother of the petitioner. Respondents 2 and 3 are the children of the 1st respondent.

4. It is the case of the petitioner that the plaint schedule property was purchased in the name of his mother under registered Sale Deed dt.11.11.1981 by his father, that he had contributed a sum of Rs.1,36,000/- for construction and development of the suit schedule property, that he is residing in eastern portion of the said property and he is a co-sharer, while the 1st respondent and his family is residing in the western portion of the same property. He contended that a legal notice was received from respondents 2 and 3 dt.20.07.2012 alleging that the suit schedule property is their property, that they had acquired the same under a registered Gift Deed dt.19.01.1993

executed by his mother pursuant to a registered GPA executed by her in favour of the 1st respondent, that the alleged GPA and the Gift Deeds were both invented and created for the purpose of depriving the share of the petitioner and they have been fabricated. He also raised a specific contention that the signature of the mother of the petitioner was forged in both Gift Deed and GPA.

5. After issues were framed, trial commenced, and after the cross-examination of DW-1 was over, petitioner filed I.A.No.1996 of 2018 to direct the Manager, Central Bank of India, Sithaphalmandi Branch, Secunderabad, to produce the withdrawal form and any other documents pertaining to his mother, whose Account Number was 21288 in the said bank. He contended that in the cross-examination, DW-1 denied the suggestion that petitioner's mother was illiterate and that her thumb impressions on Ex.A14 belong to her. He contended that his mother used to get pension after the death of his father and that she had above bank A/c and that her thumb impressions are available on withdrawal forms and if the said documents are summoned, the truth will come out.

6. The respondents opposed the said application.

7. By order dt.06.12.2018 the Court below dismissed the said application. It held that petitioner omitted to state in his affidavit filed in support of the said I.A., what true facts will come out if the documents sought by him are summoned and he did not say

specifically how the true facts will come out i.e., whether by comparison under Section 73 of the Indian Evidence Act, 1872 or by sending the same to a Hand Writing Expert.

8. Assailing the same, this Revision is filed.

9. Counsel for petitioner contended that a specific plea was taken that the thumb impression of the petitioner's mother was available in the withdrawal form in relation to the above bank account and DW-1 denied that petitioner's mother was an illiterate and that her thumb impressions are not there on Ex.A14, and the Court below could not have rejected the same.

10. The counsel for respondent refuted these contentions and supported the order of the Court below.

11. I completely agree with the contention of the counsel for petitioner that the purpose of summoning the said document having been indicated in the application itself, the same could not have been rejected by giving the above perverse reasons.

12. Therefore, this Civil Revision Petition is allowed; the Order dt.06.12.2018 in I.A.No.1996 of 2018 in O.S.No.151 of 2012 of the XII Additional Chief Judge, City Civil Court, Secunderabad, is set aside; and the said I.A., is allowed. No order as to costs.

13. Consequently, Miscellaneous petitions pending if any shall stand dismissed.

28th January, 2019.

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M.S. RAMACHANDRA RAO, J