

HON'BLE SRI JUSTICE A. GOPAL REDDY

CIVIL REVISION PETITION No.6103 OF 2009

DATE:31-12-2009

BETWEEN

Bommidi Adinarayana

...Petitioner

AND

Bommidi Sundaramma & others

...Respondents

THIS COURT MADE THE FOLLOWING:

HON'BLE SRI JUSTICE A. GOPAL REDDY

CIVIL REVISION PETITION No.6103 OF 2009

ORDER:

Late Venkata Rao, 1st defendant-revision petitioner herein and the husband of 2nd defendant are the brothers and sons of late Narayana Murthy and Seshamma. Defendants 4 and the wife of 5th defendant are their daughters. The Respondents 1 to 3 herein being the wife and daughters of late Venkata Rao instituted the suit in O.S.No.1331 of 2001 seeking partition and separation possession of the suit schedule property. Before institution of the suit, the plaintiffs got issued a notice for which, a reply notice was issued by the petitioner-1st defendant. Contesting the suit, the

petitioner-1st defendant filed a written statement, but he has not disclosed that there was a registered will, dated 5.10.1995 executed by his mother late Seshamma bequeathing the suit schedule property in his favour and his brother's wife-Saraswathi. After closure of the evidence of the plaintiffs, the petitioner-1st defendant filed his affidavit in lieu of chief-examination as D.W.1 along with I.A.No.439 of 2009 to receive the document viz. the registered will, dated 5.10.1995 stated to be executed by his mother Seshamma. By order, dated 7.10.2009 the learned I Additional Junior Civil Judge, Kakinada dismissed the I.A. It is that order which is impugned in the present revision.

Learned counsel for the petitioner strenuously contends that to establish the fact that the suit schedule property belongs to Bommidi Seshamma, the registered will deed, date 5.10.1995 executed by her in favour of the petitioner herein has to be received in evidence and therefore, the lower Court ought to have allowed the impugned I.A.

It is not disputed that the suit was filed for partition of the suit schedule property into five equal shares and for allotment of one such share to the plaintiffs and to put them in possession of the same. The very claim of the plaintiffs is that the suit schedule property belongs to the husband of 1st plaintiff. The said suit was filed in the year 2001 in which, written statement was filed in the year 2002. The evidence on the side of the plaintiffs was closed and the petitioner-1st defendant filed his affidavit in lieu of chief-examination as D.W.1. At that stage, the impugned I.A. was filed. In the affidavit filed in support of the petition, the petitioner stated that his mother executed a registered will deed on 5.10.1995 vide document No.366/1996 in sound and disposing state of mind bequeathing the suit schedule property in his favour

and also in favour of his brother's wife Saraswathi. But, he has not stated as to how his mother-Bommidi Seshamma got the suit schedule property and it is not known whether the suit schedule property is a self-acquired property. If the property is of self-acquired property of Bommidi Seshamma, the petitioner need not file any document to prove his title or possession and he can prove the same by other evidence. Though the 1st plaintiff specifically pleaded that the suit schedule property is owned by her late husband, no suggestion was put in her cross-examination to the effect that her husband has not left any property to be partitioned and that the property belongs to Bommidi Seshamma. In the absence of any such suggestion made to the plaintiffs, receiving the alleged will deed, dated 5.10.1995 is of no use. In that view of the matter, the impugned order passed by the lower Court dismissing the I.A. does not suffer from any illegality warranting interference by this Court.

The revision fails and is accordingly dismissed. No order as to costs.

A. GOPAL REDDY, J.

DECEMBER 31, 2009
Tsr.

