

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**CIVIL REVISION PETITION No.621 of 2023****ORDER:**

Aggrieved by the order dated 27.01.2023 passed in Interlocutory Application No.4 of 2019 in Original Suit No.76 of 2014 on the file of the Court of Senior Civil Judge, Sompeta, Srikakulam District, the present Civil Revision Petition is filed by the petitioner under Article 227 of the Constitution of India.

2. The petitioner herein is the plaintiff and the respondent herein is the defendant in O.S.No.76 of 2014. The petitioner herein being the plaintiff has filed O.S.No.76 of 2014 for permanent injunction restraining the defendant, his relatives, agents etc from ever interfering with the peaceful possession and enjoyment of the plaintiff over the plaint schedule property. The respondent/defendant contested the suit by way of filing written statement on 23.01.2014. In the year 2019, the petitioner herein/plaintiff filed Interlocutory Application No.4 of 2019, under Section 45 of the Indian Evidence Act, praying the Court below to send the Will dated 17.08.2008 to an organization of Central Government called 'Neutron Activation Analysis Baba Atomic Research Centre' (BARC), Mumbai to determine the age of the

contents of the said Will, the signature of the executant and signatures of the attestors and the signatures of scribe so as to know the genuineness of the said Will on the ground that the Will dated 17.08.2008 which is relied on by the respondent/defendant is a forged one created by the respondent with his associates as attestors and it is brought into existence with ante-date subsequent to the death of the plaintiff's father and as such, a scientific approach is required in this matter. The said application has been opposed by the respondent by filing counter stating that, the respondent filed the said Will along with the written statement in the year 2014 and the plaintiff did not take any steps during all these years and when the matter is posted for arguments only, this Interlocutory Application was filed only to drag the matter and prayed to dismiss the said Application. The Court below, after hearing both sides, dismissed the said application. Aggrieved by the same, the present Civil Revision is filed.

3. Heard Sri Venkateswarlu Kolla, learned counsel for the petitioner.

4. Learned counsel for the petitioner, in elaboration to what has been stated in the grounds of revision, contended that the Court below has dismissed the application on the ground that the

present application has been filed at a belated stage. He further contended that, if the document is sent for expert opinion, it could be helpful to the Court below to decide the suit and no prejudice will be caused to the defendant, if the said application is allowed, as such, prayed to allow the Civil Revision Petition.

5. Perused the material on record. The petitioner herein/plaintiff filed suit *vide* O.S.No.76 of 2014 for permanent injunction against the respondent/defendant. The plaintiff as well as the defendant are claiming rights over the subject property by way of their respective Wills. The written statement has been filed way back in the year 2014 and the present application has been filed in the year 2019, when the matter is coming for arguments. The reasons for asking to send the subject document i.e., Ex.B2/Will to the expert is solely on the ground that it is a forged and fabricated one with ante-date.

6. Firstly, to decide the suit, the parties have to let in evidence *prima facie* showing their possession over the subject property as on the date of filing of the suit. The defendant is relying on the Will alleged to have been executed by his father to show that he is in possession of the property. The expert opinion cannot be a conclusive proof and the Court can always decide whether

injunction can be granted or not basing on the evidence let in by the parties. The Court below has dismissed the present application on the ground that, the said application has been filed at a belated stage and the plaintiff has failed to file admitted signatures along with the Interlocutory Application in order to send the document for expert for comparison. No doubt, without there being any admitted signatures of contemporaneous period, the expert cannot give any opinion on Ex.B2/Will. The Court below has rightly dismissed the application and there is no illegality or impropriety in the order passed by the Court below and there are no valid grounds raised or urged before this Court in the present Civil Revision Petition warranting interference of the Court and hence, the present Civil Revision Petition is liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs of the Civil Revision Petition.

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

JUSTICE RAVI CHEEMALAPATI

14.03.2023

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Dated 14.03.2023

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