

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.1555 of 2015

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff aggrieved by the order and decree dated 16.03.2015 in I.A.No.128 of 2015 in O.S.No.46 of 2013 passed by the XVI Additional District and Sessions Judge, Nandigama, Krishna District, dismissing the application filed by her under Order 18 Rule 3-A, Rule 4 r/w. Section 151 of C.P.C., seeking to reject the chief affidavit of DW.2 (5th defendant) in the interest of justice.

2. The petitioner/plaintiff has filed the aforesaid suit against her brother (D-1), who is respondent No.1 herein, sisters (D-2 to D-4), mother (D-5) and a purchaser of the part of the suit schedule property(D-6) for partition and separate possession of the suit schedule property, which is a joint family property. While respondent Nos.1 and 6 filed separate written statements denying the claim of the petitioner/plaintiff, respondent No.5 has filed a written statement supporting the claim of the petitioner/plaintiff and respondent Nos.2 to 4 adopted the written statement of respondent No.5 by filing a Memo. After completion of the evidence of the petitioner/plaintiff, defendant No.1 himself was examined as D.W.1, and defendant No.5, who is the mother of the petitioner/plaintiff, filed her chief affidavit as D.W.2, through defendant No.1. At that stage, the petitioner/plaintiff has filed the present application in I.A.No.128 of 2015 under Order 18 Rule 3-A, Rule 4 r/w. Section 151 of C.P.C., seeking to reject the chief affidavit of D.W.2 (5th defendant), on the ground that such affidavit filed in lieu of chief-examination is contrary to the defence taken by her in the written statement. The said application was resisted by defendant No.1 by filing a counter affidavit. The Court below, after

considering the evidence and the material on record, dismissed the said application through the impugned order dated 16.3.2015. Hence, the present civil revision petition.

3. Heard learned counsel for the petitioner/plaintiff and perused the impugned order.

4. If there is any discrepancy in the chief affidavit of defendant No.5 as D.W.2 with regard to the stand taken in her written statement, the petitioner/plaintiff can as well cross-examine her on such aspects and the same will be considered at the time of final disposal of the suit after trial. But, the same is not a ground to reject the affidavit filed in lieu of chief-examination of defendant No.5 as D.W.2.

5. In view of the reasons assigned by the Court below, I do not find any illegality in the impugned order, warranting interference by this Court under Article 227 of the Constitution of India.

6 . Accordingly, this civil revision petition is dismissed, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

24.04.2015.

Msr

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