

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

**CIVIL REVISION PETITION No.613 of 2015**

**ORDER:**

This Revision is filed challenging the order dt.20-03-2013 in I.A.No.262 of 2010 in O.S.No.5 of 2002 of the Senior Civil Judge at Siricilla.

2. The petitioner herein is plaintiff in the said suit. It appears that the said suit was disposed of in terms of a compromise dt.31-01-2005 between the parties.
3. On 17-12-2009, I.A.No.262 of 2010 has been filed by petitioner stating that she was an ill-informed and rustic lady and although she is also entitled to 1/4<sup>th</sup> share, her Advocate did not advice her in a proper way and did not evince any interest in the proceedings and the decree was obtained by playing fraud on her. It was further contended that her counsel informed her that she would get equal share along with her brothers in the suit schedule property, that they prepared compromise petition and obtained her signature and she was advised to admit the compromise in the Court without being shown the compromise decree papers.
4. This application was opposed by respondent.
5. By order dt.20-03-2013, this application was rejected on the ground that she had filed her affidavit in lieu of chief-examination and had underwent part cross-examination and one Advocate by name Sri Kalyan Chakravarthy representing her Advocate Sri

S.Krishnarjuna Chary submitted before the Court that the Court may dispose of the petition on merits with the available material on record since the petitioner was not keeping good health and she was unable to depose before the Court any longer.

6. Challenging the same, this Revision is filed.
7. Heard Sri Srinivas Polavarapu, learned counsel for petitioner and Sri M.Rajamalla Reddy, learned counsel for respondents.
8. Learned counsel for petitioner contended that the petitioner was always ready and available for subjecting herself to cross-examination and respondents were dragging on the matter and so the Court below ought to have forfeited their right to further cross-examination. He also contended that the Court below was not correct in drawing conclusion that it was the petitioner who was not willing to come to the witness box. He further contended that the counsel for petitioner could not have represented that the matter be disposed of on merits on the basis of available material on record on the ground that the petitioner was not keeping good health and is unable to depose before the Court no longer. He pointed out that the statement of the counsel itself is not correct and even assuming the petitioner was not keeping good health, counsel should have filed an application for recording of her evidence through an Advocate-Commissioner, but he had no authority to represent before the Court to decide the application itself on merits.
9. Although learned counsel for respondents refuted the above contentions, I am of the opinion that since the petitioner had filed affidavit in lieu of chief-examination and underwent cross-examination in part, without any instructions from the petitioner,

the learned counsel for petitioner could not have represented that the application be disposed of on merits on the basis of available material on record. Even if the petitioner was not keeping good health and is unable to depose before the Court, her counsel should have taken steps to have her cross-examination recorded on commission. It was also open to the counsel for petitioner to represent “no instructions” in case petitioner is not cooperating with him, after issuing notice in that regard, which will then enables the Court to issue notice to petitioner to proceed with the petition.

10. In this view of the matter, the impugned order cannot be sustained. It is accordingly set aside and I.A.No.262 of 2010 in O.S.No.5 of 2002 is restored to the file of the Senior Civil Judge at Siricilla, and the said Court shall decide the same in accordance with law within a period of three (03) months from the date of receipt of a copy of this order. The petitioner shall cooperate with the disposal of the said I.A. by submitting herself for cross-examination. It is made clear that all contentions available to both parties are left open to be urged before the Court below.

11. The Civil Revision Petition is accordingly allowed. No costs.

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

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 08-10-2015

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