

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5401 of 2010

ORDER :

This Revision is filed challenging the order dt.21.09.2010 in I.A.No.1086 of 2010 in OS.No.1367 of 2005 on the file of II Additional Junior Civil Judge, Kakinada.

2. The petitioner herein is defendant in the above suit.

3. The respondent/plaintiff filed the above suit for malicious prosecution claiming claiming Rs.1,00,000/- damages from petitioner.

4. The petitioner herein filed a written statement opposing the suit claim.

5. Issues were framed, trial commenced and affidavits were filed by PWs.1 and 2 in lieu of chief-examination. PW.1 is the respondent and PW.2 is his wife.

6. I.A.No.1086 of 2010 was filed by respondent under Order 26 Rule 9 C.P.C. to appoint an Advocate-Commissioner to record the cross-examination of PWs.1 and 2 at their house or at any convenient place contending that they are both retired people and not hale

and healthy; that the wife of respondent, i.e., P.W.2, had suffered from a severe fever and could not recover to perform her daily activities; and that due to advanced age, even he was not feeling well.

7. Counter-affidavit was filed by petitioner opposing this application. He contended that since the suit is filed alleging defamation, the truth may not come out unless the witnesses are examined in open court; that the application is mischievous, malafide and ill-conceived; and there are no bonafides in filing the application.

8. By order dt.21.09.2010, the Court below allowed the said application on the ground that PWs.1 and 2 are aged persons and that even though they may not have specific ailments, they may not be in a position to attend the court, and therefore an Advocate-Commissioner can be appointed to record their cross-examination at their residence and no prejudice would be caused to petitioner. It also held that it is not a special case to observe the demeanor of witnesses nor is it a case of forgery or a delicate case involving examination of bulk documents; and that distance is not a criteria.

9. Challenging the same, this Revision is filed.

10. Heard Sri P. Govind Reddy, counsel for petitioner. None appears for respondent even though notice in the Revision is served.

11. The counsel for petitioner contends that the house of respondent is very close to II Additional Junior Civil Judge Court in Kakinada where the suit is pending; no evidence of any illness or infirmity of respondent or his wife is filed; and merely because they are senior citizens, on that ground, it is not permissible to permit cross-examination at their residence.

12. I completely agree with the said submissions.

13. Merely on the ground that PWs.1 and 2 are senior citizens, when there is no evidence of any illness or any ailment from which they are suffering, and particularly when they are said to be residing very close to the premises where the court is located, they are not entitled to have their evidence recorded through an Advocate-Commissioner at the residence of respondent.

14. Having regard to the nature of allegations in the suit, I am of the opinion that it is necessary for PWs.1 and 2 be cross-examined in the court so that their demeanor can be observed.

15. Therefore, the Revision is allowed and the order dt.21.09.2010 in I.A.No.1086 of 2010 in OS.No.1367 of 2005 on the file of II Additional Junior Civil Judge, Kakinada is set aside. No order as to costs.

16. Miscellaneous applications, pending if any in this

Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-06-2015

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