

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 3069 of 2010

ORDER:

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This Revision is filed under Article 227 of the Constitution of India challenging the order dt.02.06.2010 in I.A.No.247 of 2010 in O.S.No.631 of 2007 on the file of the II Additional Senior Civil Judge, Nellore.

2. The petitioners herein are the plaintiffs in the above suit. The suit was filed for declaration of title of the petitioners to the plaint schedule property and for delivery of possession thereof by evicting the respondents. The 2nd petitioner filed an affidavit in lieu of her chief examination on 17-03-2010 and the court below posted the same to 12-04-2010 to mark documents and for cross-examination of the 2nd petitioner.

3. At that stage, I.A.No.247 of 2010 was filed under Order XXVI Rule 1 CPC to appoint an Advocate Commissioner to record the 2nd petitioner's evidence contending that she is suffering from ill-health and she is unable to attend before the court to give evidence. There is no mention made in the said affidavit as to the nature of illness from which the 2nd petitioner was suffering and no Medical Certificate indicating such illness was filed along with the application.

4. No counter affidavit was filed by the respondents, but

they opposed the said application.

5. By order, dated 02-06-2010, the court below dismissed I.A.No.247 of 2010 on the ground that there was no evidence filed by the petitioners to establish that the 2nd petitioner is unable to appear before the court to give evidence.

6. Although the counsel for the petitioners contends that the 2nd petitioner is aged more than 70 years, I am of the opinion that merely on the said ground, an Advocate Commissioner cannot be appointed to record the cross-examination of this witness. Since the alleged ill-health of the 2nd petitioner is not substantiated by any medical certificate or medical evidence and not even the nature of illness of the 2nd petitioner is indicated in the affidavit filed in support of I.A.No.247 of 2010, I am of the opinion that the court below had rightly dismissed I.A.No.247 of 2010.

7. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date:11-06-2015

Prv

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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CIVIL REVISION PETITION No. 3069 of 2010

10-06-2015

Prv