

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.4074 of 2015

Date: 28-12-2015

Between:

Kalavathi Rajendran and another

.... Petitioners

AND

Sukul Yasodha

.... Respondent

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.4074 of 2015

ORDER:

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The petitioners are defendants in O.S.No.454 of 2012 on the file of I Additional Junior Civil Judge, Tirupathi. The said suit was filed for declaration of the Will dated 16-10-1952 as void. The petitioners filed their written statement. The evidence of the plaintiff was completed on 30-04-2015 and the suit was posted to 05-05-2015 for the evidence of the defendants. On 23-06-2015, I.A.No.563 of 2015 was filed seeking permission to examine the defendants' witness and to examine the 1st defendant at a later point of time. But, the said application was dismissed on 31-07-2015. Before dismissal of the said petition, on 09-07-2015, I.A.No.650 of 2015 was filed for appointment of an Advocate Commissioner to record the cross-examination of the petitioner/defendant at her residence. That application was dismissed on 07-09-2015 stating that the petitioner did not deny

the contention of the respondent that the petitioners was attending before Revenue Divisional Officer, Tirupathi for enquiry and also before the High Court at Hyderabad for filing petition. The Court opined that it is better to cross-examine the witness in the Court itself to avoid further complications as both parties are ladies and contend that they are suffering from illness.

The application was filed by the 1st defendant who is aged about 77 years and residing in Coimbatore, Tamilnadu. The plaintiff is a lady aged about 57 years. The suit was filed by the G.P.A. holder of the plaintiff, who is aged about 35 years and resident of Tirupathi town. In the circumstances, it cannot be said that the plaintiff cannot be in a position to travel to Coimbatore. The observation of the Court below with regard to the appearance of the petitioner before the Revenue Divisional Officer, Tirupathi and the High Court at Hyderabad on the ground that they were not denied cannot be appreciated as the present application was filed by the petitioner herself. In the normal circumstances the petitioner should have filed a medical certificate showing her inability, but the same was not filed before the trial Court. The respondent stated that she herself is suffering from diabetes and hypertension and she is a widow having no male support and she is not in a position to travel all the way from Tirupathi to Coimbatore. But the record discloses that she filed the suit through her G.P.A.

In the circumstances, the order passed dated 07-09-2015 is not correct and accordingly I.A.No.650 of 2015 is allowed by setting aside the order dated 07-09-2015 and the said application is remanded to the Court below for appointment of an Advocate Commissioner knowing Tamil language to record the cross-examination of the 1st defendant in O.S.No.454 of 2012.

Accordingly, the Civil Revision Petition is allowed. However, since the suit is of the year 2012 and the evidence of the plaintiff was completed, it is in the interest of justice that the entire suit itself can be disposed of on or before 30-04-2016. Since the parties are represented by their counsel, they are requested to cooperate for disposal of the suit. There shall be no order as to

costs.

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

A.

RAMALINGESWARA RAO, J

Date: 28-12-2015

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