

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

+ CIVIL REVISION PETITION NO.2132 of 2014

% 15-04-2015

Kotipalli Satyanarayana.

....Petitioner

And

\$ Mamidikuduru Tata Rao and three others.

.... Respondents

! Counsel for the Petitioner: Sri G. Simhadri

^ Counsel for the Respondents: Sri GVVSR Subrahmanyam

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION NO.2132 of 2014

ORDER:

The 1st defendant in the suit, instituted for partition by the 1st respondent herein/plaintiff, is the petitioner in this revision. He moved I.A.No.375 of 2013 in O.S.No.53 of 2007 seeking recall of PWs.1 to 3 for cross-examination on his behalf. The learned Junior Civil Judge, Mummidivaram, has recorded that PW.1 filed his affidavit in lieu of chief-examination on 06.02.2013 and thereafter, the matter was posted for cross-examination of PW.1 on 15.02.2013 and 21.02.2013 and again, it was adjourned to 01.03.2013 and 08.03.2013. The petitioner herein, who is the 1st defendant in the suit, has failed to cross-examine PW.1. In the meantime, PWs.2 and 3 have filed their chief affidavits and they were cross-examined by defendant No.4. Now at this stage, recall petition of PWs.1 to 3 is filed.

The learned counsel for the petitioner, Sri G. Simhadri, would strenuously submit that the petitioner is nearly 70 year old man having certain health problems and his wife and son were challenged persons and he has to take good care of them. All these factors cumulatively, came in the way of the petitioner herein in cross-examining PWs.1 to 3. This explanation has not found favour of the trial Court, as no specific ailment has been set out and further, no material is produced in proof of any such disposition. Therefore, the trial Court has rejected the interlocutory application.

The learned counsel for the 1st respondent/plaintiff in the suit would submit that at least on two different occasions the Court has adjourned the matter by imposing costs, but still, the petitioner herein has not cooperated in completing the cross-examination of PWs.1 to 3.

It is important to notice that if one is not in a physically sound position to attend to the hearing of the case, he is supposed to instruct his counsel thoroughly so that cross-examination can be carried out by the counsel. The presence of a party in a Court hall would only be required for securing any clarification at the last minute. Otherwise, the moment pleadings are settled and the contents of the chief affidavit are made known, the cross-examination of any such witness, can be very effectively carried out by instructing the counsel. Therefore, I am convinced that the petitioner herein in spite of being provided with adequate opportunities has not availed the same to cross-examine PWs.1 to 3 and hence, there is no meaning in recalling those witness at this point of time, particularly, when the suit is very old one instituted in the year 2007 and it is almost 8 years since it was instituted and it is

required to be disposed of on priority basis.

This apart, in a suit for partition, the defendants' stand on the same footing as that of the plaintiff, therefore, the petitioner herein is entitled to lead such evidence as he has considered appropriate on his behalf. However, the Court would show appropriate consideration in that respect, without putting any undue burden on the petitioner herein for his failure to cross-examine PWs.1 to 3.

Accordingly, this revision stands dismissed.

Consequently, miscellaneous petitions, pending in this petition, shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

15.04.2015

Note: L.R. Copy to be marked

(B/o)

ska