

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.5049 of 2014

-

ORDER:

The defendants in O.S.No.866 of 1990 on the file of the learned Principal Junior Civil Judge, Jangaon, Warangal District, are the petitioners. They are aggrieved by the dismissal of I.A.No.233 of 2014 filed by them in the said suit under Order XXVI Rule 4 CPC for appointment of an Advocate Commissioner to record the evidence of a witness by name Boga Sidamma at her residence in Sholapur Town in Maharashtra State.

This Court granted interim stay of further proceedings in the suit on 27.12.2014.

Despite notice being served, the respondent/plaintiff has not chosen to enter appearance before this Court.

Perusal of the order under revision reflects that the trial Court was of the opinion that the subject I.A. was liable to be dismissed as it was filed at a belated stage and as the matter pertained to the year 1990 and was the oldest suit on the file of that Court. However, as rightly pointed out by Sri Mandhani, learned counsel for the petitioners/defendants, the suit was filed in the year 1990 but amendment of the plaint therein was permitted as late

as in the year 2004. The first defendant in the suit seems to have filed a written statement on 25.11.2005, wherein she specifically took the plea that the plaintiff was an impersonator and that the real Siddamma came from Sholapur Town in Maharashtra State.

In that view of the matter, this Court is of the opinion that as the plea of impersonation was taken by the deceased first defendant at the earliest stage after the amendment of the plaint, the trial Court ought not to have brushed aside the subject I.A. on the ground that the suit was of the year 1990. The issue sought to be raised by the defendants went to the core of the matter as the identity of the plaintiff was being disputed.

The order under revision is accordingly set aside and the matter is remitted to the trial Court for appointment of an Advocate Commissioner to undertake recording of the evidence of the witness at Sholapur as prayed for. Keeping in mind the fact that the suit relates to the year 1990, the trial Court shall fix a time frame for completion of the commission and shall endeavour to dispose of the suit thereafter as expeditiously as possible.

This Civil Revision Petition is accordingly allowed.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY

KUMAR, J

12th MARCH, 2015.

kvni