

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3874 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The petitioner herein is plaintiff in O.S.No.2415 of 2004 on the file of the Court of IV Senior Civil Judge, City Civil Court, Hyderabad (for short, trial Court). He filed the said suit for partition and separate possession of property admeasuring Ac.1-15 guntas in survey No.403/1/Paiki/E, situated at Shaikpet Village, Banjara Hills, Hyderabad. In the said suit of the year 2004, the petitioner herein filed I.A.No.56 of 2015 for appointment of an Advocate Commissioner for marking the documents and recording the evidence of P.W.1. The said application was dismissed by the trial Court, by order dated 07.07.2015, challenging which, the present Civil Revision Petition is filed.

3. The petitioner filed the said application stating that she is suffering from old age related ailments such as chronic heart problem, arthritis, diabetes and high blood pressure. She also stated that she applied to the doctor for issuance of certificate and she would produce the same during the course of hearing. She further stated that her condition was bad and she signed the affidavit at her residence when her counsel sent the affidavit through his clerk. A counter was filed opposing the said application on the ground that the petitioner herself has been dragging on the matter from time to time and since her residence is situated at Banjara Hills, she can easily attend the Court by car. It is further stated that the diseases mentioned by the petitioner are false and no proof of the same is filed. Ultimately, the application was dismissed by holding that the evidence of the parties should be recorded in public in the Court premises and they should stand for cross-examination and the said rule can be relaxed only in exceptional circumstances. It is also held that since the petitioner asked for marking certain documents whose

relevancy and admissibility have to be decided at the time of marking and also in view of the absence of any medical certificate in support of her illness, the application was dismissed.

4. There is no dispute with regard to the age of the petitioner being 72 years and she appears to have been unmarried. Though she prayed for marking of certain documents during the course of examination, it is always open to the defendants to raise their objection, if any inadmissible documents are marked. The prayer for recording the cross-examination of the petitioner cannot be negated on the ground that the admissibility and relevancy of the documents have to be considered by the Court. No doubt the petitioner did not file any medical certificate, but stated in her affidavit that she would produce the same during the course of hearing. However, taking the over all circumstances in the case and in view of the long pendency since 2004, this Court feels proper to allow the application of the petitioner. Accordingly, this Court is constrained to set aside the order of the trial Court dated 07.07.2015 in I.A.No.56 of 2015 in O.S.No.2415 of 2014 and it is remanded to the trial Court for appointment of an Advocate Commissioner for recording the cross-examination of the petitioner and marking the documents subject to their admissibility and relevancy.

5. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 17.12.2015
TJMR