

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.1182 OF 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed aggrieved by the order, dated 03.03.2015, passed in I.A.No.1497 of 2014 in O.S.No.461 of 2002 by the learned Principal Senior Civil Judge, Vijayawada.

Originally, four persons have filed the aforesaid Suit. Second plaintiff was examined as PW.1 and he was also cross-examined. It appears that, thereafter, PW.1 had died and no other person was examined on behalf of the plaintiffs. Therefore, the petitioner has filed the present application in I.A.No.1497 of 2014, under Sections 94 and 151 and Order XXII Rule 3 (2) of C.P.C. and Section 136 of Indian Evidence Act, to eschew the deposition of PW.1 from the evidence of plaintiffs, so that no reliance can be made on the evidence of PW.1 in view of his death.

Heard learned counsel for the petitioner.

The questions that arise for consideration in this case are whether the evidence of PW.1 can be eschewed in view of his death, and whether the other plaintiffs can rely on such evidence or not.

It is not in dispute that during the life time of PW.1, he was examined and also cross-examined by the defendants. Merely

because PW.1 had died and his legal representatives are not brought on record, his evidence, which was recorded during his lifetime, cannot be eschewed. As much as PW.1 had died during the pendency of Suit, at most, the Suit can be abated against him. In that view of the matter and in view of the findings recorded by the Court below, I do not find any merit in this revision, so as to interfere with the impugned order passed by the Court below.

Accordingly, the Civil Revision Petition is dismissed. Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. No costs.

R. SUBHASH REDDY, J

March 27, 2015

MD