

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.2667 of 2015

ORDER :

This revision is filed by the petitioners/defendants 1 and 2 under Article 227 of the Constitution of India against the respondents (plaintiffs and defendants 3 to 5) impugning the docket order dated 21.04.2015 in O.S.No.21 of 2010, on the file of the learned Senior Civil Judge, Proddutur praying to set aside the same.

2. Heard the learned counsel for the petitioners/defendants 1 and 2 before admission and before notice to the respondents 1 to 9 who are no other than the plaintiffs and defendants 3 to 5 and perused the material on record.

3. Before considering the merits of the order impugned herein, let us see what Order XVIII Rule 3-A speaks as follows:-

Party to appear before other witnesses.- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

On perusal of the Order from the interpretation given to it with literal interpretation that procedural law **is the** handmaid and not **the** mistress of justice, the 2nd limb of the Order XVIII Rule 3-A of C.P.C. is interpreted that power of the Court to permit the party to give evidence as a witness of his own at a later stage as the discretion is to subserve the ends of justice at any point of time provided there are reasons in support of it. Undisputedly, in the factual matrix with reference to the law, the 3rd plaintiff did not reserve any right to adduce evidence of his own might be not chosen to come to the witness box as already witnesses examined as P.Ws. 1 to 6 including third party witnesses among them. It is during pendency of the suit, from the 3rd plaintiff died by his Legal Representatives came on record as plaintiffs 4 to 6 which fact is not in dispute. It is the 4th plaintiff came to the witness box as P.W.7 and his

chief examination affidavit is taken as per Order XVIII Rule 4 CPC by the Court on oath as it appears. The other defendant as well as the plaintiffs, as the case may be, sought for deferring of the cross-examination as they raised objection saying the 3rd plaintiff having not reserved his right to come to the witness box at the later stage in the first limb of Order XVIII Rule 3-A of C.P.C., the Legal Representatives stepping into the shoes of 3rd plaintiff including 4th plaintiff as P.W.7 has no right to come into witness box to depose having waived their right, the lower Court categorically assigned its own reasons in this regard with reference to the facts that when the 3rd plaintiff died and what the 4th plaintiff-P.W.7 want to depose is explaining events subsequent to the death of the 3rd plaintiff and nothing more with any improvement to the stand of the 3rd plaintiff much less contradictory to it by virtue of the subsequent events as seeking permission of them at the initial stage to examine later under Order XVIII Rule 3-A could not be contemplated during lifetime of 3rd plaintiff, the permission is accorded for the 4th plaintiff to examine as P.W.7 in taking up the chief examination affidavit on oath under Order XVIII Rule 4 C.P.C. It is to say the scope of the Article 227 of the Constitution of India is very limited, it is not mere irregularity but also showing of that resulted grave injustice or prejudice to the right of a party. Had it been shown with the version of the 4th plaintiff as P.W.7 is contradictory to the stand taken by the 3rd plaintiff in his lifetime being one of the Legal Representatives of him by stepping into the shoes, definitely it could be a case for complaining prejudice but from the counter there is nothing more.

4. Having regard to the above, for this Court while sitting against the discretionary power exercised by the trial Court within its ambit as per the Second limb of Order XVIII Rule 3-A of C.P.C., there is nothing to interfere.

5. Accordingly, the revision is dismissed. Consequently,

miscellaneous petitions, if any, pending in this revision stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 17.07.2015

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