

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION NO.1403 OF 2015

ORDER:

This revision petition, filed under Article 227 of the Constitution of India by the defendant in O.S.No.134 of 2009 on the file of the court of the Additional Senior Civil Judge, Ongole, challenges the order passed by the said court in I.A.No.1628 of 2014 in O.S.No.134 of 2009.

2. Heard Sri Sudhir Kumar, learned counsel for the petitioner and the learned counsel for the respondents and perused the material available on record.

3. The respondent herein filed O.S.No.134 of 2009 against the petitioner and the second respondent herein, for specific performance of agreement of sale dated 12.10.2007. In the said suit, plaintiff/first respondent herein filed the present I.A.No.1628 of 2014 under the provisions of Order XVIII Rule 17 read with Section 151 of Civil Procedure Code (CPC), seeking to recall D.W-1, for further cross examination. The petitioner/first defendant resisted the said application by way of filing counter.

4. The learned Additional Senior Civil Judge, Ongole, by way of an order dated 19.02.2015, allowed the said interlocutory application calling in question the validity and sustainability of the said order passed by the learned Additional Senior Civil Judge, the present revision petition has been filed.

5. It is contended by the learned counsel for the petitioner that the impugned order is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order XVIII Rule 17 of the CPC. It is further submitted by the learned counsel that the court below did not take into consideration, the counter filed by the petitioner and passed the questioned order without assigning any reasons.

6. On the contrary, it is vehemently contended by the learned counsel for the first respondent/plaintiff that there is no illegality nor material infirmity in the questioned

order, as such, the petitioner herein is not entitled for indulgence of this court under Article 227 of the Constitution of India.

7. In the above background, the question that falls for consideration is:

“Whether the order under challenge is sustainable and tenable?”

8. Point:

The information available before this court manifestly discloses that the first respondent herein instituted the suit for specific performance of agreement of sale and in the said suit, the plaintiff/first respondent filed the present I.A.No.1628 of 2014 under the provisions of Order XVIII Rule 17 read with Section 151 of CPC. In support of present I.A., first respondent herein filed an affidavit stating that after verifying the record, his counsel advised him to file an application to recall D.W-1 for further cross examination with regard to the alleged will dated 05.01.2004, marked as Exhibit B-3.

9. The second defendant/petitioner herein filed a counter, resisting the said application and in the said counter, the second defendant/petitioner herein raised various issues, which according to the petitioner, disentitle the applicant for getting any relief.

10. A perusal of the order passed by the learned Additional Senior Civil Judge, Ongole, vividly reveals that the learned Additional Senior Civil Judge, did not consider any one of the averments in the counter filed by the petitioner herein. The learned Senior Civil Judge, in the considered opinion of this court, ought to have considered the objections of the second defendant/petitioner herein and ought to have answered the same. Except saying that in view of the facts and circumstances stated in the affidavit and in the interest of justice court is inclined to allow the petition, the learned Senior Civil Judge did not assign any other reasons. On this ground alone, in the definite opinion of this court, the impugned order cannot be sustained.

11. For the aforesaid reasons, the revision petition is allowed, setting aside the order dated 19.02.2015 passed by the court of learned Additional Senior Civil Judge, Ongole, in I.A.No.1628 of 2014, and the matter is remanded to the said court for fresh consideration of I.A.No.1628 of 2014 and for passing appropriate orders, within a period of one month from the date of receipt of this order, after giving opportunity to

all the stake holders.

12. Miscellaneous petitions pending consideration, if any, in the Revision Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

07th August, 2015

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