

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4817 of 2014

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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the order dated 14.10.2014 of the learned Principal Junior Civil Judge, Chittoor passed in I.A.No.763 of 2014 in O.S.No.33 of 2011 filed under Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to reopen the evidence on the plaintiff's side for the purpose of adducing further evidence in relation to exhibits A4 to A7.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff (for short, 'the plaintiff') and the learned counsel for the respondents/defendants (for short, 'the defendants'). I have perused the material record.

3. The case of the plaintiff in support of the request for reopening the case is this:

The suit is brought for perpetual injunction in respect of an immovable property. Through the present counsel he came to know recently that without his consent and without producing further evidence, his former counsel had reported no further evidence on his side. The said counsel has passed away subsequently. Therefore, the plaintiff has engaged the present counsel to prosecute the case. From the present counsel he had come to know that no evidence was adduced in regard to exhibits A4 to A7. Therefore, it has become necessary to seek reopening of the evidence on the side of the plaintiff for adducing further evidence in regard to the said documents.

4. The case of the defendants is this:

After the closure of the evidence on the side of the plaintiff, the defendants had adduced evidence on their side. Later, the plaintiff having taken some more adjournments for advancing arguments had filed the present petition. Earlier the plaintiff had filed similar petition; and the plaintiff was given sufficient opportunity to file documents and adduce evidence. The plaintiff having availed the said opportunity is not entitled to seek reopening of the evidence to fill up the lacunae. The petition is intended to delay the disposal of the suit of the year 2011.

5. By the impugned order the trial Court dismissed the petition holding *inter alia* that after amendment of the Code no opportunity to reopen the evidence shall be given unless there are compelling reasons and that the plaintiff had failed to show that there are compelling reasons to reopen the case. Aggrieved of the said orders, the plaintiff had preferred this Revision Petition.

6. The learned counsel for the plaintiff made submissions in line with the case of the plaintiff, which is stated *supra*.

7. The learned counsel for the defendants while supporting the orders of the Court below and making submissions in line with the case of the defendants would contend that the plaintiff who had once availed the opportunity of adducing further evidence, after getting the matter reopened, is not entitled to have the matter reopened once again for adducing further evidence and that the petition is not *bona fide* and is *mala fide*.

8. I have bestowed my attention to the facts and given earnest consideration to the submissions.

9. In the suit filed for perpetual injunction in respect of an immovable property, if the plaintiff wanted really to adduce further evidence in

regard to the said exhibits A4 to A7, he ought not to have filed the subject petition alone for reopening the evidence on his side, as mere reopening of the evidence on the side of the plaintiff would not serve any purpose. He ought to have filed along with the said petition for reopening the evidence, the other necessary application for recalling him (PW-1) if he in fact had intended to further depose in the matter to prove the exhibits A4 to A7. The plaintiff had failed to do so. And, no explanation is forthcoming as to why the plaintiff had filed an application only for reopening the evidence on his side without filing any further application for recalling PW1 or any other witness. He did not also state as to who would be examined as a witness to prove exhibits A4 to A7, in case he does not want to re-enter the witness box for the said purpose. Viewed thus, this Court finds that the order impugned does not call for any interference.

10. In the result, the revision petition is dismissed confirming the order of the Court below. However, since the suit in regard to an immovable property of a considerable value is at the stage of further trial in the Court of first instance, it is made clear that this order shall not preclude the plaintiff from filing a fresh application for the same purpose along with the other necessary applications, if any, by showing valid reasons for fresh consideration by the trial Court. It is needless to state that if the plaintiff files any such applications, the trial Court shall give an opportunity to the defendants to file their counters, if any, and dispose of the said applications on merits and in strict accordance with the procedure established by law. Since the suit is of the year 2011, the trial Court shall make an endeavour to dispose of the suit, as expeditiously as possible, preferably within a period of four (4) months from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision

Petition shall stand closed.

M. SEETHARAMA MURTI, J

April 22, 2016
*Note: Furnish C.C. by
27-04-2016. B/o.Pn*

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