

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4921 of 2015

ORDER:

This revision under Article 227 of the Constitution of India by the unsuccessful petitioner-plaintiff is directed against the order dated 14.09.2015 of the learned Judge, Family Court-cum-IV Additional District Judge at Adilabad passed in IA.No.419 of 2015 in OS.No.31 of 2008 filed for reopening the evidence on the side of the plaintiff to enable the plaintiff to examine one K.V. Pratap as PW4, as according to the plaintiff he is one of the witnesses present at the time of the oral agreement on the basis of which the instant suit for specific performance is filed. Be it noted that, on transfer, the suit is presently pending on the file of the III Additional District Court, Asifabad of Adilabad District.

I have heard the submissions of Sri H. Venugopal, learned counsel for the petitioner-plaintiff, and Sri K.V. Bhanu Prasad, learned counsel for the respondents 1 to 6. Though respondent no.7 is served, none appears. I have perused the material record.

Sri H. Venugopal, learned counsel, would submit that earlier attempts to examine the aforesaid witness as PW4 did not fructify due to non attendance and non co-operation of the said witness and that certain earlier applications filed in that regard by the plaintiff were dismissed by the trial Court and that after some time, when the witness again expressed willingness to come forward before the Court and give evidence on behalf of the plaintiff, the present application has come to be filed and that the examination of the said witness is highly essential to establish the case of the plaintiff as he is one of the witnesses present at the time of oral agreement of sale and that if such witness is examined, no prejudice would be caused to the defendants. He would, *inter alia*, submit that the defendants reported no evidence on their side and that the orders of the Court

below refusing to reopen the evidence to enable the plaintiff to examine the said witness on the ground that its earlier orders operate as *res judicata* is unsustainable as the interlocutory orders do not operate as *res judicata* and that the second application for the same relief on changed circumstances is maintainable under facts and in law.

Sri K. V. Bhanu Prasad, learned counsel, while supporting the orders of the Court below stated that the matter is pending before the trial court since 2014, only for the examination of an additional witness on the side of the plaintiff and that though the trial Court is justified in not granting the request of the plaintiff, since the suit is pending and the plaintiff contends that the witness is a crucial witness, appropriate orders may be passed on merits of the matter.

I have given earnest consideration to the facts and submissions.

In a suit for specific performance based on oral agreement of sale, since plaintiff contends that the examination of the proposed witness as PW4 is highly essential to establish his case and the present petition is filed after the said witness making a promise to the plaintiff to come before the Court and give evidence and as the matter is before the trial Court, this Court is of the considered view that one more opportunity can be given to the plaintiff to examine the proposed witness, K.V. Pratap, as PW4 by reopening the evidence on the side of the plaintiff as such a course would sub-serve the ends of justice.

Accordingly, the Civil Revision Petition is allowed and the impugned order of the Court below is set aside. As a sequel, IA.No.419 of 2015 is allowed and the evidence on the side of the plaintiff is reopened only for the purpose of enabling the plaintiff to examine Sri K. V. Pratap, as PW4 on his side. However, considering the submissions that the suit is a sufficiently old suit, the plaintiff is directed to make a request appropriately to the trial Court to fix a date before

11.11.2016 for the appearance and examination of K.V. Pratap as PW4 and produce the said witness before the trial Court on the date so fixed by the Court as per the convenience of the Court and the parties. On failure of the plaintiff to do so, the right of the plaintiff to examine the said witness shall stand forfeited.

Miscellaneous petitions pending, if any, in this revision petition shall also stand dismissed. No order as to costs.

M. SEETHARAMA MURTI, J

01.11.2016

Note: Issue CC by 02.11.2016.

(B/o)

Vjl

