

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4891, 4968 & 4854 of 2015

COMMON ORDER:

These three revision petitions respectively were maintained impugning the separate orders of the learned Additional Senior Civil Judge, Tirupati, dated 22.07.2015 covered by I.A.Nos.1329, 1331 and 1330 of 2014 in the pending suit O.S.No.266 of 1997.

The matter undisputedly pending at the stage of arguments of the plaintiffs after closure of evidence of both sides, it is at this stage, the three applications filed by plaintiff Nos.2 and 3 supra, legal representatives of 1st plaintiff. The averments in support of the applications almost common are that their senior paternal grand father executed wills by bequeathing the property in favour of their father-late 1st plaintiff and brother of late 1st plaintiff.

It is the submission that those two wills were exhibited in E.A.No.546 of 1997 in E.P.No.66 of 1997 in O.S.No.46 of 1977 of the selfsame Court and those are required to be sent for and those are permitted to be adduced in evidence through plaintiffs by recall of PW.1 and for that purpose, the matter requires reopening. This was opposed by the defendants and ultimately those were ended in dismissal. The lower Court observed under the impugned orders in dismissing the three applications that it is belated and there is no diligence as required by law to take if at all any steps before closure of their evidence or at least before closure of evidence of defendants and the filing of the application in the oldest suit of 1997 when matter is pending for arguments cannot be considered. It is now impugning the same, these revisions are filed.

The law is fairly settled on the scope of Order XVIII Rule 17 CPC that it is not as of right of any party to adduce evidence, but for

it is just for the Court to reopen the matter and permit any party to adduce any evidence to the extent permitted by Court where necessary for effective disposal of the lis. Here the purpose is to send for the documents which are already exhibited in another matter and to exhibit the same by recall of PW.1 by reopening the plaintiffs' evidence. Once the claim has some relevance to the lis from bequeaths allegedly made in the wills by the senior paternal grand father of plaintiff Nos.2 and 3, the trial Court could have been considered at best on terms, for belated filing itself is not a sole ground, once the evidence is necessary for effective disposal of the lis.

Having regard to the above, all the three revision petitions are allowed subject to costs of Rs.5,000/- payable by the plaintiffs/revision petitioners to the defendants within fifteen (15) days from the date of receipt of this order either to pay their advocate or to deposit before the trial Court and therefrom, the trial Court shall reopen the evidence and permit recall of PW.1 after sent for the documents if necessary by substitution with certified Xerox copies, to produce the same to exhibit in the pending trial matter of O.S.No.266 of 1997. It is made clear that the purpose of recall of PW.1 to exhibit the documents and to depose is only about the documents and not to adduce any further evidence other than touching the wills and claim therein.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.09.2016
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