

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.218 OF 2016

ORDER :

This Civil Revision Petition is filed by the petitioner challenging the order dt.15.12.2015 in I.A.No.878 of 2015 in O.S.No.42 of 2007 of the III Additional District Judge, West Godavari at Bhimavaram.

2. The petitioner herein is the defendant in the above suit, which was filed by the respondent against him for specific performance of an agreement of sale and for injunction.

3. The respondent however was convicted in a Sessions Case No.234 of 1999 on the file of the Assistant Sessions Judge, Bhimavaram and was sentenced to undergo imprisonment for a period of ten years and he is serving the sentence in Central Prison, Rajahmundry.

4. Respondent's elder brother died on 11.09.2015 and respondent was granted escort parole for five days from 01.10.2015 to 05.10.2015 to attend his brother's death ceremony at Bhimavaram.

5. The respondent then came to Bhimavaram and filed three applications, one for receiving documents, another to recall him & to reopen the suit and also for receiving his additional chief examination affidavit.

6. Respondent also filed I.A.No.878 of 2015 to appoint an

Advocate-Commissioner to record his further cross-examination at Central Prison, Rajahmundry.

7. Counter affidavit is filed by the petitioner in the Court below opposing the said application and contending that respondent cannot seek appointment of an Advocate-Commissioner to record cross-examination at Central Prison, Rajahmundry for the purpose of marking certain documents and to depose about the same. He also contended that the documents sought to be marked by the respondent cannot be allowed to be marked.

8. By docket order dt.15.12.2015, the Court below allowed the said application and appointed an Advocate-Commissioner to record the evidence of the respondent in Central Prison at Rajahmundry.

9. Challenging the same, this Revision is filed.

10. The principal contention of the counsel for the petitioner is that specific reason had not been given in the impugned order, while appointing the Advocate-Commissioner to record further cross-examination of the respondent at Central Prison, Rajahmundry.

11. While it is true that specific reason is not mentioned in the impugned order, the Court below mentioned that under the circumstances, the application is allowed, obviously, taking

note of the plea of the respondent that he was lodged at Central Prison, Rajahmundry to serve the sentence of imprisonment imposed in the Sessions Case referred to above and the fact that the evidence of the respondent cannot otherwise be completed, since he cannot come to the Civil Court and depose while serving sentence in the Central Prison, Rajahmundry.

12. In this view of the matter, I am of the opinion that there is no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

13. Therefore, this Civil Revision Petition is dismissed. There shall be no order as to costs.

14. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

10th June, 2016
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