

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1827 of 2016

ORDER:

This Civil Revision Petition filed by the unsuccessful plaintiffs is directed against the orders dated 22.03.2016 of the learned Principal Junior Civil Judge, Visakhapatnam, passed in I.A.No.440 of 2016 in O.S.No.859 of 2003 filed under Section 151 of the Civil Procedure Code to set aside the orders dated 04.01.2016 eschewing the evidence of PW-2.

Having heard the submissions of learned counsel for plaintiffs/revision petitioners (hereinafter 'plaintiffs') and the learned counsel for the respondent/defendants (hereinafter 'defendants'), I have perused the material on record.

The facts which are not in dispute, in brief, are as follows :

The plaintiffs filed suit against the defendants for perpetual injunction in respect of Plaint-A Schedule property and recovery of possession of B-Schedule property after removal of structures thereon. The defendants are resisting the suit. After the affidavit in lieu of examination in chief of PW-2 was filed during the course of trial, he was partly cross-examined before the Court and later an Advocate-Commissioner was appointed for recording the further deposition of the said witness. Before the learned Commissioner, the learned counsel for the defendants, cross-examined the said witness on certain occasions; there was no further progress thereafter. Therefore, the matter was listed before the Court for recording further deposition of the said witness. However, as the defendants failed to further cross-examine PW-2, his evidence was closed. Later, on an application filed by the defendants,

PW-2 was recalled. Thereafter, PW-2 did not appear before the Court for facing further cross-examination and sought several adjournments and the adjournments, sometimes at oral requests and on some occasions on applications, were granted. All those adjournments were sought on the same set of facts. After giving ample opportunities for appearance of PW-2 and on his non-appearance, the evidence of PW2 that was available on record, was eschewed by the trial Court by its orders dated 04.01.2016. In the said circumstances, the subject application is filed to set aside the said order and permit PW-2 to appear before the Court for further cross-examination.

A perusal of the material on record reflects that during the course of hearing of the said application, to a query posed by the trial Court, the learned counsel for the plaintiffs submitted that PW-2 is ready to appear before the trial Court and face cross-examination; further, the learned counsel filed a Memo to grant 15 days time for appearance of PW-2 for further cross-examination as he is a senior citizen. Be that as it may, the order impugned further reflects that since the plaintiffs sought a long time of 15 days, the trial Court was of the view that the plaintiffs are intending to drag on the proceedings under the guise of procrastinating the cross-examination of PW-2 and, hence, dismissed the petition.

The learned counsel for plaintiffs, while reiterating the chronology of events which are not in dispute, submits that when the trial Court asked the plaintiffs' counsel as to when PW-2 would appear for facing further cross-examination, it is fairly submitted that 15 days time is required and that in the event, the trial Court is not inclined to grant such a long time, it ought to have fixed an early date for further cross-examination of PW-2

instead of dismissing the petition, and that in view of the fact that valuable rights in regard to immovable property are involved, an opportunity be granted to PW-2 to appear before the trial Court for facing further cross-examination after setting aside the order impugned in this revision. He would further submit that the suit is posted to 24.10.2016 and that if this Court so directs, PW-2 is prepared to appear on that day before the trial Court for his further cross-examination and that such a course, if permitted, would meet the ends of justice.

Per contra, the learned counsel for the defendants, while pointing out to the conduct of PW-2 as reflected in the order of the Court below, would submit that PW-2 was granted sufficient time for his appearance to face further cross-examination before the trial Court and that some of the applications for adjournment filed on the same set of facts were liberally allowed on payment of costs and despite granting sufficient opportunities, PW-2 did not appear before the trial Court and that in view of his previous conduct and the further conduct in seeking long time of 15 days for appearance before the trial Court at the time of hearing, the trial Court is justified in dismissing the application of the plaintiffs filed for setting aside the order dated 04.01.2016.

I have bestowed my attention to the facts and submissions. What is to be noted is that the subject matter of the suit is a valuable immovable property and that the matter is still before the trial Court and that the previous conduct of PW-2 in regard to his non-appearance before the trial Court was already condoned and therefore, the previous conduct cannot be made a ground for refusal of the request in the subject application. Further,

as rightly pointed out by the learned counsel for plaintiffs, the trial Court, if it is not inclined to grant a long time of 15 days for appearance of PW-2, ought to have fixed an early date for his cross-examination instead of dismissing the application. On an overall consideration of the facts and submissions, this Court is satisfied that there is acceptable merit in the case of the plaintiffs/revision petitioners. In that view of the matter, this Court is of the considered view that the order impugned in this revision brooks interference.

In the result, the revision petition is allowed and the order dated 22.03.2016 in I.A.No.440 of 2016 in O.S.No.859 of 2003 on the file of Principal Junior Civil Judge, Visakhapatnam, is set aside and the said interlocutory application is allowed and the order dated 04.01.2016 eschewing the evidence of PW-2 is set aside. Considering the fact that the suit is of the year 2003 and the submissions of the learned counsel for the plaintiffs, PW-2 is directed to appear before the trial Court on 24.10.2016 by 10.30 a.m. and on such appearance, the trial Court shall take up the matter either on the same day for further cross-examination of PW-2 or on any other date that may be fixed as per its convenience and the convenience of both the parties and complete the recording of the further deposition of PW-2 as expeditiously as possible and then dispose of the suit in strict adherence to the procedure established by law. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

18th October 2016

Note: Issue C.C. by tomorrow.

(b/o) ajr