

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5808 of 2015

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by the order, dated 24.11.2015 passed in I.A.No.558 of 2015 in O.S.No.5 of 2013 on the file of the Senior Civil Judge, Sircilla, wherein and whereunder an application to set aside the order dated 25.08.2015 in closing the evidence of DW.3 was rejected.

The facts in issue are as under:

The respondent herein filed O.S.No.5 of 2013 for perpetual injunction restraining the defendants, their family members, agents, supporters, workmen etc. from entering into and interfering with the peaceful possession and enjoyment of the plaintiff over the agricultural lands admeasuring Ac.0.16 gts., in Sy.No.836/A and Ac.0.04 gts., in Sy.No.836/AA which are described as item No.1 and agricultural land admeasuring Ac.0.27 gts., in Sy.No.26, Ac.1.13 gts., in Sy.No.835, Ac.1.14 ½ gts. In Sy.No.830 and Ac.0.11 ½ gts., in Sy.No.832 which are described as item No.2 in the schedule, which is one compact and one piece of land situated at Nizamabad village, Konaraopet Mandal, Karimnagar District. In the said suit written statement was filed, issues were framed and the trial also commenced. After completing the evidence of plaintiff, the defendants examined DWs.1 and 2 and the affidavit in lieu of chief examination of DW.3 was filed. As DW.3 failed to appear before the trial Court on three adjournments for cross-examination, the learned trial Judge

closed the evidence of DW.3 on 25.08.2015. Thereafter the petitioners filed I.A.No.558 of 2015 to set-aside the order dated 25.08.2015 in closing the evidence of DW.3, which was dismissed. Aggrieved by the same, the present revision is filed.

The counsel for the petitioner submits that the chief affidavit of DW.3 was filed on 07.07.2015 and the matter was posted to 23.07.2015 for his cross examination. On that day the presiding officer was not present and the case was posted to 07.08.2015. On a request made by the counsel for the defendants the matter was directed to be listed on 25.08.2015. Since DW.3 could not be present before the Court on that day for cross examination, the evidence of DW.3 was closed. It is stated that non-appearance of DW.3 was only due to his illness and that grave prejudice would be caused if DW.3, whose chief affidavit is filed, is not subjected to cross examination since the averments in the chief stands eschewed for consideration if he is not subjected to cross examination.

Learned counsel for the respondent submits that this delay tactics should be avoided by fixing a particular date for cross examination of DW.3.

Having regard to the submissions made, the present Civil Revision Petition is disposed of directing DW.3 to be present before the trial Court on 08.02.2016 and subjected himself for cross examination. If, DW.3 fails to appear before the trial Court on that date in O.S.No.5 of 2013, the trial Court shall close the evidence and proceed further with the matter. It is needless to mention that the trial Court shall dispose of O.S.No.5 of 2013 as early as possible, preferably, within a period of eight to twelve weeks after cross examination of DW.3. There shall be no order

as to costs.

Miscellaneous Petition, if any, pending in this Civil
Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.01.2016

Note: Issue C.C. by Monday.

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