

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4425 of 2014

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful 1st defendant/petitioner is directed against the orders dated 30.10.2014 of the learned Senior Civil Judge, Kothapeta, East Godavari District passed in I.A.no.520 of 2014 in O.S.no.83 of 2009 filed under XXVI Rule 1 of the Code of Civil Procedure, 1908 requesting to appoint an Advocate Commissioner to record the cross-examination of the 1st defendant (DW1).

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant', for brevity) and the learned counsel for the respondents 1 and 2/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. In a suit for cancellation of the decree in O.S.No.37 of 2007 on the ground of fraud, after the evidence on the side of the plaintiffs is over, the 1st defendant had filed in the Court below, the instant application with the aforementioned prayer. The case of the plaintiffs, as can be gathered from the material record and the submissions, is that the defendants 2 to 4, who are acting in collusion with the 1st defendant, had played fraud on the Court and had obtained the earlier decree to deprive the plaintiffs in the instant suit from enforcing the decrees that they had obtained against the property of late Velagal Venkata Reddy, which lies in the hands of the defendants 2 to 5; and that, therefore, the instant suit is filed for cancellation of the said decree that was obtained by fraud. The 1st defendant is resisting the present suit. In this backdrop, the 1st defendant had sought for appointment of an Advocate Commissioner for recording his cross-examination *inter alia* submitting that he is of 75 years of age and he is not in a position to undertake travel from his native place and attend personally before the Court below. The said

application was resisted by the plaintiffs. The Court below had dismissed the said application of the 1st defendant on the ground that in case an Advocate Commissioner is appointed to record the cross-examination of the 1st defendant, some problems may arise during the recording of the cross-examination of the 1st defendant and that considering the nature of the suit, the examination of the 1st defendant in Court is necessary, as sometimes, the demeanour of the witnesses, which may be recorded in the deposition, may be of vital importance in adjudicating the *lis*.

4. Aggrieved of the said orders of the Court below, the 1st defendant preferred this revision reiterating the submissions in the affidavit that he is of 75 years of age and that he is not in a position to undertake journey from his native place to the Court below and that the plaintiffs had opposed his said application only to trouble him and that the findings recorded by the Court below are unsustainable.

5. The learned counsel for the plaintiffs while supporting the order of the Court below would submit that the impugned order does not call for any interference by this Court.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. In the well considered view of this Court, if a senior advocate is appointed as a Commissioner to record the cross-examination of the 1st defendant (DW1), he would be in a position to effectively deal with the problems that may arise during the recording of the cross-examination; further, if a direction is also given to the said Advocate-Commissioner, who may be appointed, to record the demeanour of the witnesses, as and when necessary, in the deposition for consideration of the Court below at an appropriate stage, the said course would meet the ends of justice. Considering the aforementioned reasons, this Court finds that the Civil Revision Petition can be allowed and the impugned order can be set aside.

8. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently, I.A.No.520 of 2014 in O.S.No.83 of 2009 on the file of the Court below stands allowed. The trial Court is directed to appoint a senior advocate, in accordance with the procedure established by law, from the panel of advocates being maintained by the Court, as an Advocate Commissioner for recording the cross-examination of DW1/1st defendant after duly incorporating the necessary directions in the warrant to be entrusted to the said Advocate Commissioner having regard to the observations in this order and the facts of the case. Considering the fact that the suit is of the year 2009, the Court below is directed to complete the above exercise as expeditiously as possible and direct the Advocate Commissioner so appointed to complete the recording of the cross-examination of DW1/1st defendant and also re-examination, if any, and file his report within a period of one (01) month from the date of the receipt of a copy of this order.

There shall be no order as to costs.

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

M. Seetharama Murti, J

18th March, 2016

Note:-

Issue C.C. by 22.03.2016.

(B/o)

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