

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4158 OF 2016

ORDER:

The Civil Revision Petition is filed by petitioners/ defendants impugning the order dated 22.06.2016 passed in I.A. No.481 of 2016 in O.S. No.530 of 2008 on the file of XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad, wherein the application for recording the cross examination of PW.1 by re-entrusting the warrant to the Commissioner, who closed by considering the cross examination as nill, was dismissed.

2) Heard learned counsel for the revision petitioners and learned counsel for the respondent. Perused the material on record.

3) The revision petitioners are defendants and respondent herein is the plaintiff, who maintained O.S. No.530 of 2008 for declaration to declare him as owner and possessor of the plaint schedule property bearing MCH No.14-3-298, admeasuring 220 Sq.yds, Joshiwadi, Begum Bazar, Hyderabad and to direct the defendant Nos.1 and 2 to register the Release Deed dated 01.06.1989 in favour of plaintiff in respect of the suit schedule property and also being perfected the title, to declare the registered gift settlement deed bearing document No.554 of 2006 dated 23.03.2003 executed by defendant No.2 in favour of defendant No.3 as null and void and not binding on the plaintiff and for perpetual injunction.

4) From the affidavit filed in support of the petition in I.A. No.481 of 2016 covered by the impugned order dated 22.06.2016, there is a mention that because of the so-called death of (defendant

No.3) son of petitioners/ defendant Nos.1 and 2 on 06.02.2015, the petitioner/ defendant No.1 could not approach the advocate to give instructions being residents of Madhya Pradesh State and the Commissioner closed the cross examination of PW.1 when the counsel for defendants stated want of instructions to conduct the same, thereby, it requires to reopen. The date of commission, which was fixed on 21.03.2016 and there is not even any application filed much less by the advocate for any instructions of the defendant No.1 or defendant No.2, the parents of late defendant No.3, if at all, if any, adjournment before the Commissioner, well in advance, atleast on that day, even to substantiate that ground and once the advocate on record cannot arrogant in preparing the cross examination, that too, when Order XVIII mandates the completion of the Commissioner's examination within 60 days from the date of entrustment, in fact there is nothing to find fault.

5) However, the basic principle remains that the Court has to decide, to the extent possible, the lis on merits from contest of both parties. Only on cross examination of witness, there is full evidence of the witness on record that gives ability to the Court to properly appreciate the evidence in arriving the truth in the voyage of trial. Thereby, despite these latches specifically pointing out in counter by the plaintiff, this Court feels just to sub-serve the ends of justice to permit the cross examination of PW.1 instead of re-entrusting the warrant to the commissioner for recording by Court fixing a date for the advocate of defendants meanwhile to receive any instructions from the defendants personally or through phone or otherwise by any messenger or letter and same is subject to

payment of costs of Rs.5,000/-. If the defendants fail to avail the opportunity on the date being fixed by the trial Court for cross examination of PW.1 before the Court by payment of costs of Rs.5,000/- to the plaintiff or counsel for plaintiff on that date in open court, the trial Court can close the evidence without giving any further opportunity. It is brought to the notice of this Court that I.A. Nos.801 and 802 of 2016 filed for recall of PW.1 and reopen the evidence of PW.1 are pending before the trial Court and these became infructuous. Hence, it is made clear, by virtue of this order, directing the trial Court to close these applications without any further adjudication, but for to decide on its own merits in I.A. Nos.800 and 803 of 2016 pending, if any.

6) Accordingly and in the result, the revision is allowed by setting aside the impugned order of the lower Court with the above directions and costs.

7) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.26.10.2016
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