

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4860 OF 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/

2nd defendant is directed against the orders dated 27.07.2015 of the learned Additional Junior Civil Judge of Vizianagaram passed in I.A.no.30 of 2014 in O.S.no.414 of 2006 filed under Section 151 of the Code of Civil Procedure, 1908 requesting to reopen the evidence on the side of the 2nd defendant-municipality to enable it to adduce evidence on its behalf.

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

3. To begin with, the facts, which led to the filing of this revision by the 2nd defendant, in brief, are as follows:

On the date 06.05.2014, to which the suit was posted for the evidence on behalf of the defendants, the Commissioner of the 2nd defendant-municipality was engaged in election duty in connection with the Assembly and Parliament elections, and hence, he could not contact the advocate. Therefore, for his non-attendance, the trial Court is pleased to close the evidence on the side of the defendants. However, the 2nd defendant-municipality is having a strong defence. Therefore, it is necessary to seek reopening of the evidence to substantiate its defence. Hence, the petition is filed.

4. No counter is filed.

5. The trial Court dismissed the application of the 2nd defendant–municipality, *inter alia*, observing that DW2 was cross-examined on 15.04.2014 and that despite adjourning the matter for adduction of further evidence by indicating that the matter is being adjourned as a last chance, the defendants were absent and had failed to adduce further evidence on their side and that therefore, there are no acceptable and reasonable grounds for reopening the evidence, more particularly, when the election duties will not be there for more than ten days.

6. The learned counsel for the 2nd defendant/revision petitioner would submit that the Commissioner of the 2nd defendant–municipality had offered a valid explanation for his absence on the date to which the matter was posted for adducing the further evidence on the side of the defendants before the trial Court and that the trial Court ought to have seen the nature of the property and the controversy involved in the *lis* and ought to have given an opportunity to the 2nd defendant–municipality, which is a public body, to substantiate its defence in a suit involving a valuable immovable property. However, the learned counsel for the plaintiffs supported the orders of the trial Court.

7. Having given a detailed and thoughtful consideration to the facts and the submissions, this Court is of the considered view that one more opportunity can be given to the 2nd defendant– municipality to adduce further evidence, if any, on its side having regard to the nature of the controversy and the subject matter of the suit. Further, when the matter is before the trial Court, it is just and fair to reopen the evidence for giving an opportunity to the 2nd defendant-municipality. Viewed thus, this Court finds that there is acceptable merit in the revision and that the order impugned calls for interference.

8. In the result, the Civil Revision Petition is allowed and the

order passed in I.A.no.30 of 2011 in O.S.no.414 of 2006 on the file of the Additional Junior Civil Judge of Vizianagaram is set aside; and consequently the said IA is allowed and the evidence on the side of the defendants is reopened to give an opportunity to the 2nd defendant-municipality to adduce its evidence. 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

Date:8th July, 2016

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