

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.2895 of 2015

ORDER

The revision petitioner is the plaintiff in O.S.No.16 of 2007, which is the suit for specific performance of the contract for sale dated 18.08.1983 to enforce against the contesting defendants-respondents 1 to 11, who are the legal representatives of the original executant of the sale agreement. Pending trial of the suit under contest, during plaintiff's evidence as PW.1, I.A.No.155 of 2014 was filed on 15.09.2014 by the plaintiff under Order VII Rule 14 CPC to receive the previous depositions of PWs 2 and 3 with names Kondareddy Krishna Reddy and G.Venkatarami Reddy given in the earlier suit O.S.No.72 of 2001. It is now submitted by both sides that it is mistakenly mentioned instead of DWs 2 and 3 as if PWs 2 and 3 and filed certified copies of depositions showing so as DWs 2 and 3 only. Among them Sri K.Krishna Reddy died and pursuant to which his deposition as DW-2 in O.S.No.72 of 2001 is relevant and admissible within the purview of Sections 33 read with 136 of the Evidence Act, to exhibit the same as evidence in this suit with right of cross examination to the defendants on that deposition exhibited also on truth and credibility of the deposition of the dead person, if at all to do so and beyond that there is nothing to oppose for exhibiting the same through plaintiff. invoke. So far as the previous deposition of DW.3 Sri G.Venkatarami Reddy of the suit O.S.No.72/2001 concerned, he is admittedly alive and there is nothing by any medical record to show that he is out of reach to secure or he is unable to speak and unable to move from bed and incompetent to give evidence but for at best to say he is not in a position to freely move and attend the Court. If it is so, on showing by medical record, remedy is to seek for appointment of a commissioner to record the evidence of him as contemplated by Order XXVI Rule 4 and 4 (a) read with Order XVIII CPC. Once such is the case, there is no foundation to receive the previous deposition of G.Venkatarami

Reddy to exhibit through plaintiff but for to keep it on file by receiving for otherwise not admissible of the deposition of a living person even relevant except on his coming to witness box, if at all to confront either under Section 145 or 155 (3) of the Evidence Act.

Having regard to the above, the revision is partly allowed for receiving the documents, however by receiving of the deposition of DW-3-G.Venkatarami Reddy alive no way makes it admissible even shown relevant, but for to use by the other side or by plaintiff for cross examination of own witnesses under Section 154 of Evidence Act with leave of the Court as the case may be, for any to confront for any contradiction of the previous statement in the deposition under Section 145 and 155 (3) of the Evidence Act.

Accordingly, the revision is disposed of setting aside the order of the lower Court and subject to above observations and with no costs.

Miscellaneous petitions pending in the revision petition, if any, stand closed.

Dr. B. SIVA SANKARA RAO, J

21st July, 2016.

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