

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4474 of 2015

ORDER:

The unsuccessful petitioner-3rd party filed this revision, under Article 227 of the Constitution of India, challenging the order dated 16th September 2014 of the learned VIII Additional District Judge, Vijayawada of Krishna District, passed in I.A.No.806 of 2012 in O.S.No.110 of 2009. The said IA was filed by him, *inter alia*, claiming that the defendant is deaf and dumb and is mentally retarded and hence, the third-party-petitioner, who is his son, may be permitted to represent him in the suit- being the guardian duly appointed by the Court of the learned Principal District Judge, Nellore vide decree dated 31st January 2012 in G.O.P.No.188 of 2011.

By orders impugned in this revision, the said petition was dismissed.

The case of the respondent/plaintiff is that he filed the suit for specific performance against the defendant and that the defendant is not mentally retarded and that vakalat and written statement are filed by the defendant in his own name and that he was earlier conducting the suit on his own by filing verified pleadings and that a deaf and dumb person is a competent witness as per the provisions of the Indian Evidence Act and that the order and decree in G.O.P.No.188 of 2011 are not binding on the plaintiff/respondent as he is not a party to the said proceedings and that the defendant, who is now being stated to be mentally retarded person, executed a registered gift deed dated 11th March 2008 in favour of his son/the petitioner and his wife and that an earlier application in I.A.No.807 of 2011 filed by his wife for permission to represent the defendant, her husband, as

his guardian, was dismissed by the trial Court on 07.07.2011 and that therefore, orders impugned in this revision do not brook interference.

The learned counsel for the revision petitioner/third party would submit that the order impugned was passed only by observing that I.A.No.807 of 2011 was earlier dismissed by the Court on 07.07.2011 and without looking into the decree in the Guardian O.P., which is already on record as well as the medical certificate issued by the Superintendent of Government Hospital for Mental Care, Hyderabad, wherein, it was certified that the defendant is having 50% Mental Retardation/disability and that the order passed without looking into the said documents is unsustainable and is liable to be set aside.

I have given earnest consideration to the facts and submissions of both the sides.

A perusal of the material record would show that at the hearing of the interlocutory application, no oral and documentary evidence was adduced. The petitioner/third party who relies upon the decree and decretal order in the Guardian OP to show that the defendant who is none other than his father is mentally retarded, ought to have exhibited the said decree and order besides the certificate issued by the Superintendent of Government Hospital for Mental Care, Hyderabad, to establish the pleaded case. Similarly, the respondent/plaintiff, who is *inter alia*, contending that the defendant is not mentally retarded, ought to have exhibited the gift settlement deed aforementioned, to substantiate his defence. Neither of the parties did so at the hearing of the interlocutory application. A perusal of the impugned order also shows that the trial Court did not refer to the documents, which

are on record. Viewed thus, this Court finds that the matter requires fresh consideration by the Court below as an order is required to be passed after taking into consideration the submissions as well as the documentary evidence, which the parties may wish to adduce at the hearing before the Court below.

In that view of the matter, the civil revision petition is allowed and the order dated 16.09.2014 in I.A.No.806 of 2012 in O.S.No.110 of 2009 is set aside and the matter is remitted to the trial Court for disposal afresh on merits in strict accordance with the procedure established by law, after giving opportunity to both parties to adduce relevant and necessary evidence, which they wish to adduce. The trial Court shall first take up this interlocutory application and dispose of the same as directed in this order before proceeding further with the trial of the suit. Considering the fact that the suit is a sufficiently old one, the trial Court shall complete the exercise as directed in this order as expeditiously as possible, preferably within one month from the date of receipt of a copy of this order. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

25th October 2016

Note :

Issue C.C. by 31.10.2016.

(b/o)

ajr