

naHON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL REVISION PETITION NO.4397 OF 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/Defendant No.4 aggrieved by the order dated 26.07.2016 in I.A.No.133 of 2016 in O.S.No.45 of 2012 on the file of the Junior Civil Judge, Rajampet, whereunder the learned Judge has dismissed the petition filed by the petitioner/defendant No.4 under Section 151 of C.P.C. with a prayer to reopen the case and permit the petitioner to adduce his evidence.

Heard the learned counsel for the petitioner, Sri Chetluru Sreenivas, and the learned counsel for the respondents Sri Ch. Janardhan Reddy, and with their consent this Civil Revision Petition is disposed of at the admission stage.

The respondents/plaintiffs filed O.S.No.45 of 2012 for declaration of title and consequential permanent injunction in respect of the plaint schedule property. The said suit was filed against four defendants, wherein the defendant No.4 is represented by one counsel and he filed his independent written statement and other defendants are represented by another counsel. Be that as it may, the submission of the learned counsel for the revision petitioner/defendant No.4 is that the matter was coming up for the evidence of defendants and on 14.3.2016, DWs.1 and 2 were cross-examined and the matter was posted for further evidence to 28.03.2016. He further submitted that on 28.03.2016 defendant No.4 was suffering with fever and jaundice and as such he was unable to attend the Court and also unable to give instructions to his counsel and in his absence the trial Court called him and closed his evidence along with other defendants, though the matter was coming up for further evidence of defendants 1 to 3 only.

Learned counsel further submitted that he filed I.A.No.133 of 2016 in O.S.No.45 of 2012 to reopen the case and permit him to adduce evidence on his behalf (D-4), but the said petition was dismissed by the trial Court on an erroneous observation that on 28.03.2016 as if along with other defendants, defendant No.4 also reported no evidence and therefore his evidence along with other defendants was closed and the matter was posted for arguments and in that backdrop, the petition in I.A.No.133 of 2016 was not maintainable, which was only to drag on the proceedings. Learned counsel vehemently contended that on 28.03.2016, defendant No.4 was absent due to his ill-health and he could not give instructions to his counsel and apart from that the matter was posted to that date only for further evidence of other defendants and if the other defendants reported no further evidence, the trial Court should have closed their evidence and posted the matter for the evidence of defendant No.4, but instead, the trial Court closed the evidence of defendants including defendant No.4 due to which, the defendant No.4 was denied opportunity to adduce his evidence and he has a good case in the suit and therefore an opportunity may be given to him to adduce evidence by allowing Civil Revision Petition and setting aside the impugned order.

Per contra, learned counsel for the respondents/plaintiffs would contend that the petition is not maintainable because as per docket order on 28.03.2016, all the defendants reported no evidence and therefore the trial Court rightly closed the evidence and posted the matter for arguments and since there are no merits in I.A.No.133 of 2016, the trial Court rightly dismissed the said petition. Therefore, the present Civil Revision Petition is liable to be dismissed as there are no *bona fides*. Learned counsel also contended in I.A.No.133 of 2016 the

petitioner/Defendant No.4 has not arrayed the defendants 1 to 3 as party-respondents.

The point for consideration is whether there are on merits in the Civil Revision Petition to allow?

Copy of the docket order produced by the learned counsel for the petitioner/Defendant No.4 would show that on 14.3.2016 D.W.1 present and he was cross-examined and D.W. 2 was also present and he was also cross-examined by the learned counsel for the plaintiffs and at the request of the parties the matter was posted for further evidence on 28.3.2016. The docket order dated 28.03.2016 reads as follows:

“Reported no further evidence for D1 to D4. Hence, for arguments, call on 18.04.2016”.

The docket order, dated 28.03.2016, reads no further evidence was reported for D-1 to D-4 and hence the matter was posted for arguments. If this docket order is read in conjunction with the docket order dated 14.03.2016 one can discern that on 28.03.2016 the matter was posted only for further evidence of D.Ws./D-1 to D-3 as they were contesting the matter separately. It is pertinent to note that copy of written statement filed by Defendant No.4 independently is also placed on record by the learned counsel for the Revision petitioner/Defendant No.4.

In that view of the matter, it can be said, on 28.03.2016 the matter was posted for further evidence of defendants, other than Defendant No.4. If the other defendants reported no further evidence, the matter ought to have been posted for the evidence of Defendant No.4 since he filed written statement independently. However, the docket order reads as if “Reported no further evidence for D1 to D4. Hence for arguments, call on 18.04.2016”. Logically, the question of Defendant

No.4 reporting no further evidence does not arise on 28.03.2016 since by that date his evidence had not yet been commenced. However, in the impugned order the trial Court observed as if on 28.03.2016, D-1 to D-4 reported no evidence on their behalf and therefore the matter was closed and posted for arguments. This observation cannot be countenanced for the reason stated supra. Further, it is a suit for declaration of title and consequential injunction wherein valuable rights of the parties are at stake. In that view of the matter and as the evidence of Defendant No.4 was not yet commenced on 28.03.2016, the I.A.No.133 of 2016 deserves to be allowed.

In the result, this Civil Revision Petition is allowed by setting aside the order dated 26.07.2016 in I.A.No.133 of 2016 in O.S.No.45 of 2012 and the trial Court is directed to give an opportunity to the Defendant No.4 to adduce his evidence and dispose of the suit on merits within two months from the date of receipt of a copy of this order. No costs.

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

U. DURGA PRASAD RAO, J

Dt. 18.11.2016

Note:- CC by tomorrow.

(B/O)

GBS