

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition Nos.1173 and 1233 OF 2014

COMMON ORDER:

The unsuccessful petitioner/defendant in I.A.Nos.980 of 2013 and 1473 of 2013 in O.S.No.324 of 2009 on the file of the learned Principal Senior Civil Judge, Mancherial, impugning the separate dismissal orders dated 23.12.2013 and 26.03.2014 after contest passed in the above applications for recall of P.W.1 in the first petition(I.A.No.980 of 2013) for the purpose of further cross-examination and in the second petition(I.A.No.1473 of 2013) specifically saying to confront with the legal notice cause issued by the plaintiff through his advocate on 25.07.1998 allegedly traced recently with averments therein of asking for a partition and separate possession in maintaining the present suit for declaration and possession, preferred the present two revisions.

2.Heard the learned counsel for the petitioner/defendant vis-à-vis the respondent/plaintiff and perused the material on record.

3. In support of the grounds of both the revisions, it is the contention of learned counsel for the revision petitioner/ defendant that the very notice contents are crucial to decide the lis as notice speaks for partition and separate possession, whereas the suit filed is for declaration and possession claiming absolute rights and not any joint rights and thereby it is the purpose that is to be achieved to confront the witness which is the criteria and not mere belated filing, that too, when explanation of tracing notice very recently to the filing of I.A.No.1473 of 2013 is offered.

4. It is the contention of the learned counsel for the

respondent/plaintiff in the two revisions supporting the orders of the lower Court that by the time the applications were filed in 2013 one after the other for the self-same purpose to recall P.W.1 though in the subsequent application saying to confront with the notice contents referred supra, at the stage when the matter is ripen for arguments, the defendant was simply examined as D.W.1 on his side and plaintiff's side, P.Ws. 1 to 4 examined and evidence was closed and now it is nothing but to put spokes for earlier disposal of the suit.

5. From the above, the very purpose of seeking recall of P.W.1 is only to confront with the said notice contents which are crucial as referred supra, the trial Court ought to have allowed the application in I.A.No.1473 of 2013 but dismissed the same also without further merits consideration simply saying for I.A.No.980 of 2013 is ended in dismissal, though there is no res-judicata for interlocutory applications so to file subsequent application, if there is a foundation to consider independently.

6. Accordingly and in the result, both the revisions are allowed by re-opening the evidence and by permitting recall of P.W.1 for cross-examination further by the defendant only to confront the legal notice cause issued by the plaintiff to the defendant dated 25.07.1998, and the contents in relation to the suit claim and such an exercise is to be made on the day fixed by the trial Court by securing the presence of P.W.1 before the Court, without giving further time by the defendant for cross-examination; unless the Court for want of time postpones for any reason beyond its control. It is needless to say that the plaintiff shall produce P.W.1-plaintiff before the trial Court within one week from the date of receipt of this order without any summons. The trial Court shall

make an endeavour to record the further evidence of P.W.1 by cross-examination and dispose of the suit after hearing on merits as early as possible as the original suit is of 2006 and it is already taken a decade time. There is no order as to costs.

7. Pending miscellaneous petitions, if any, in these revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:28.07.2016

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