

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3198 of 2016

ORDER:

This Petition under Article 227 of the Constitution of India is filed challenging the Order dt. 17.03.2016 in I.A.No.151 of 2016 in O.S.No.740 of 2005 on the file of Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad.

2. The case of the Revision Petitioner/D.2 before this Court is that the witness i.e., Dw.2 was examined on 22.10.2010 and later the case was adjourned to 28.10.2010 for further evidence of Dw.2. But, on 28.10.2010, the counsel for the petitioner/D.2 could not attend the Court during call work and thereupon the matter was adjourned to 2.11.2010 closing the evidence of petitioner's and posted the matter for arguments. The reason for failure to appear before the Court is explained by the petitioner. However, the respondents herein denied the reason while contending that the matter is protracted by the petitioner without any justifiable cause and on account of delay, the respondents are being put to loss and damage.

3. The trial Court recorded reasons for dismissing the petition. But, I find that it is a fit case to afford one

opportunity to the petitioner/D.2 to adduce entire evidence on his behalf so as to decide the matter on merits since the substantial rights in immovable property are involved in the suit filed for partition that to the relief claimed in the plaint is purely discretionary, where trial Court failed to exercise discretion properly, this Court can interfere with the Order by exercising power under Article 227 of the Constitution of India. Therefore, the Order dt. 17.03.2016 in I.A.No.151 of 2016 (old I.A.No.235 of 2010) in O.S.No.740 of 2005 is liable to be set aside.

4. Accordingly, this Revision Petition is allowed setting aside the Order dt. 17.03.2016 in I.A.No.151 of 2016 in O.S.No.740 of 2005 on the file of Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court at Hyderabad, and the trial Court is directed to fix a convenient date for both plaintiff and defendant No.2 to adduce entire evidence on behalf of petitioner/D.2. In the event of failure of the petitioner to adduce evidence, the trial Court can pass appropriate orders on that day. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

---

M. SATYANARAYANA MURTHY, J

Date: 21-09-2016.

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.3198 of 2016

Dt. 21-09-2016

eha

