

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.4938 OF 2017

ORDER:

This Civil Revision Petition is arising out of the order dated 24.07.2017 passed in I.A. No.559 of 2017 in O.S No.49 of 2014 passed by the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Vizianagaram.

2. Heard arguments of learned counsel for petitioner at the stage of admission.

3. The petitioner filed a suit for partition and separate possession of his share against respondent No.1. He has filed I.A. No.559 of 2017 under Section 151 C.P.C for reopen of the suit to receive further evidence and the said petition was dismissed by the trial Court. Aggrieved by the impugned order, the petitioner preferred the present revision.

4. It is submitted by learned counsel for petitioner that the evidence of PW.1 and DW.1 and 2 was recorded by trial Court. As DW.1 stated in his cross examination that the plaintiff was not the biological son of his father and as DW2 stated in his chief examination that the plaintiff was not the biological son of his father, the petitioner has filed the above petition under Section 151 C.P.C for reopening of his evidence, to take steps to prove that he was the natural son of one Sanyasi, the trial Court has dismissed the petition, without giving any opportunity to the petitioner to prove that he was the son of Sanyasi.

5. It is further submitted that the trial Court observed in para No.6 of the judgment that the petitioner should have examined a witness to prove his paternity as he is claiming a share in the property, therefore the petitioner has filed the present petition, in order to examine the witness on his behalf to prove his paternity.

6. In fact, it is the case of the plaintiff that he is the biological son of Sanyasi. If defendants deny that fact, the burden lies on the defendants to prove that he was not the biological son of Sanyasi. More over, the defendants have not taken any such plea in their written statement that the plaintiff was not a biological son of one Sanyasi. Without there being any plea in the written statement, the defendants cannot merely say that this petitioner was not biological son of Sanyasi. Therefore, the plaintiff need not adduce any evidence to deny that contention, which has no foundation in the written statement of defendants. The said contention is not based on any foundation of defence in the written statement of defendants.

7. It is also pertinent to note that the trial Court has not gone into the merits of the case, but it has made only a passing remark about the relationship of the parties, observing that the plaintiff ought to have examined the witnesses to establish the contention of the defendants that he was biological son of Sanyasi. In fact, the finding is unwarranted in this petition as there is no foundation for that pleading.

8. Since the defendants have not taken any plea in the written statement denying relationship of the petitioner with Sanyasi, the

observations of the trial Court does not in any way effect the rights of the petitioner.

9. With these observations, as the defendants have not taken such plea in the written statement, the examination of the witnesses by the plaintiff to prove his paternity does not arise.

10. Accordingly, the Civil Revision Petition is disposed of. Miscellaneous petitions, pending if any, in this petition shall stand closed.

27.10.2017.
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GUDISEVA SHYAM PRASAD, J

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Date:27.10.2017

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