

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1162 Of 2011

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 23.09.2010 passed in I.A.No.334 of 2010 in O.S.No.60 of 2000 on the file of the Court of the Junior Civil Judge, Cheepurupalli, Vizianagaram District.

2 The contention of the learned counsel for the petitioner is three fold. 1) The trail Court ought not to have allowed the petition filed by the respondents under Order XVI Rule 14 CPC, 2) the trail Court committed grave error while allowing the counsel for the respondents to cross examine C.Ws.1 to 3, and 3) the trail Court ought not to have allowed the counsel for the respondents to cross examine C.Ws.1 to 3 beyond the scope of chief examination of C.Ws.1 to 3.

3 *Per contra*, the learned counsel for the respondents submitted that the petitioner has not challenged the order of the trail Court dated 23.09.2010. He further submitted that the cross examination of C.Ws.1 to 3 is confined to their chief examination. He further submitted that there is no illegality or irregularity in the order passed by the trail Court warranting interference of this Court.

4 Now the question that arises for consideration in this revision petition is 'whether the trail Court committed error while permitting the counsel for the respondents to cross examine C.Ws.1 to 3'?

5 To substantiate the argument, the learned counsel for the petitioner has drawn attention of this Court to the ratio laid down in ***Loyola Public School Society v. P. Anil Kumar***¹ wherein it was held

¹ 2007 (5) ALT 586

that the court witnesses cannot be cross examined without the leave of the Court and at the same time the cross examination shall be confined to the answers given by the witnesses to the questions put by the Court and not on general lines.

6 A perusal of the record clearly reveals that the petitioner herein filed O.S.No.60 of 2000 on the file of the Court of the Junior Civil Judge, Cheepurupalli of Vizianagaram District against the respondents for perpetual injunction. After completion of evidence on both sides, the respondents herein filed I.A.No.334 of 2010 in O.S.No.60 of 2000 under Order XVI Rule 14 CPC seeking permission of the Court to examine the witnesses mentioned therein as court witnesses. After affording a reasonable opportunity to both parties, the trail Court allowed the said application on 23.09.2010. One of the grounds raised by the learned counsel for the petitioner is that the trail Court committed grave error while allowing the said petition. If really the petitioner is aggrieved by the orders of the trail Court dated 23.09.2010 in I.A.No.334 of 2010, what prevented him to challenge the order passed therein. The order passed in the said I.A became final so far as the respondents are concerned. Without filing any revision challenging the order passed in I.A.No.334 of 2010, the petitioner is not entitled to urge that the order passed in I.A.No.334 of 2010 are not legally sustainable.

7 The other contention of the learned counsel for the petitioner is that the counsel for the respondents cross examined the witnesses without the leave of the Court. I have carefully perused the depositions of C.Ws.1 to 3. A perusal of

the same reveals that at first instance the Court has given liberty to the petitioner herein to cross examine the witnesses. But the petitioner did not choose to cross examine the witnesses. Thereafter, the Court permitted the counsel for the respondents to cross examine the witnesses. This clearly indicates that the trial Court granted permission to the respondents for cross examination of the witnesses. The contention of the learned counsel for the petitioner that the counsel for the respondents cross examined the witnesses without the leave of the Court is factually not sustainable.

8 The learned counsel for the petitioner submitted that the counsel for the respondents in the trial Court ought not to have cross examined the witnesses beyond the scope of their chief examination. C.W.1 is none other than the father of the plaintiff. C.W.2 is the vendor of C.W.1. C.W.3 is owner of the land covered under Ex.B.4. These three witnesses categorically stated that they do not know anything about the dispute between the parties. I have carefully scanned the cross examination of C.Ws.1 to 3. The learned counsel for the respondents in the trial Court cross examined these witnesses with reference to the dispute only. A perusal of the cross examination of these witnesses, prima facie, reveals that the same is confined to the version put forth by them in their chief examination. The trial Court has not committed any illegality or irregularity which warrants interference of this Court. Hence

this Civil Revision Petition is liable to be dismissed as devoid of any merit.

9 In the result, the Civil Revision Petition is dismissed. No order as to costs. However, the trial Court is hereby directed to consider the cross examination of C.Ws.1 to 3 in the light of Order XVI Rule 14 CPC and pass appropriate orders. As a sequel, miscellaneous petitions, pending in this revision petition, if any, shall stand closed.

Date: 1st February, 2017
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T. SUNIL CHOWDARY, J

