

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 4712 of 2016

Order:

The suit in O.S.No.47 of 2008 on the file of the Junior Civil Judge, Kanigiri was filed by the respondents 1 and 2 herein for perpetual injunction against the respondents 3 to 5 and the petitioner herein.

The petitioner herein is claiming to be a purchaser from the third defendant. She was examined as DW.1 and later on an affidavit of the husband of the petitioner was filed as DW.2. Since he did not turn up, his evidence was eschewed. In those circumstances, she filed the application in I.A.565 of 2016 in O.S.No.47 of 2008 to reopen the matter for the purpose of her further evidence.

A counter was filed on behalf of the respondents stating that the petitioner was examined as DW.1 after taking several adjournments and thereafter an affidavit in lieu of chief examination of her husband was filed on 13.04.2016. But, he did not turn up for cross-examination and hence his examination was eschewed on 25.04.2016. There is no provision in law to recall a witness whose evidence was eschewed and the present application is filed only to drag on the proceedings.

The trial Court dismissed the said application with the following order.

“The petitioner/D4 without getting ready to adduce evidence, has taken several adjournments and even after imposing costs. The petitioner/D4 has not filed chief affidavit and cost and conditional order. She has filed her chief examination affidavit and even after filing of chief examination affidavit she does not attend before the Hon'ble Court for cross-examination and the and this Court closed her evidence after closing of her evidence. The petitioner has filed petition and on cost. The petition was allowed and even after allowing the petition she took several adjournment to attend the court for her cross-examination after cross-examining of DW.1. The chief affidavit of DW.1 filed after taking several adjournment and even after filing of chief examined affidavit of DW.2 does not attend the court evening after granting several adjournment and filing he does not attend

the honourable court his evidence of achieved on 25.04.2016 to reopen the evidence of DW.2 also dismissed. At the request for counsel for D4 the court granted further evidence 21.06.2016 finally and against the petitioner D4 took time and the this Court adjourned the matter to 07.07.2016 and again at request it was adjourned for the evidence of D4 to 18.07.2016 and as the petitioner/D4 as not filed affidavit of her witness. This court closed the evidence of the D4 and posted to 27.07.2016 for arguments. Meanwhile the petition filed for reopen the suit and it is the old case and it is the pre-2011 case and so many adjournment given to them a failed to adduce evidence. On 25.04.2016 the suit is posted for further evidence of defendant the again posted for 28.04.2016 with a direction meanwhile the I.A.No.382/2016 pending. That I.A. dismissed the defendant could not able to come forward for cross-examination to adduce evidence. The direction of the defendant could not follow hence this court closed the evidence of further evidence of defendant side evidence closed. Hence the petition is dismissed.

In the result, this petition is dismissed.”

Though the order is not intelligible, this Court is in agreement with the dismissal of the petition. It is not known how the petitioner who is the fourth defendant in the suit got herself examined as DW.1. Be that as it may, as per the oral submissions made by the learned counsel for the petitioner, the petitioner claims to have purchased the property from the third defendant, whereas the case of the plaintiffs is that they purchased the property from the husband of the third defendant. Even if the application is allowed no useful purpose is going to be served to the petitioner as her rights cannot be determined in a suit for injunction filed by the plaintiffs, where she was arrayed as the fourth defendant.

In the circumstances, the Civil Revision Petition is dismissed at the admission stage. There shall be no order as to costs. The miscellaneous petitions, if any, shall stand closed.

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A. RAMALINGESWARA RAO, J

Date: 27.01.2017

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