

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION. NO.607 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.653 of 2016 in O.S.No.25 of 2010 dated 16.12.2016, filed under Order XVIII Rule 4 r/w Section 151 C.P.C, seeking permission to the first plaintiff to examine himself as P.W.3 by recalling the plaintiff evidence for better prosecution of the case.

It is alleged in the affidavit filed along with the petition that the petitioners filed O.S.No.25 of 2010 for declaration and perpetual injunction against the respondent. The respondent filed affidavit under Order XVIII Rule 4 of C.P.C in lieu of his examination in chief of D.W.1 and after cross-examination of D.W.1, the case was posted for further evidence of defendant. Further, as the first petitioner could not be examined as P.W.3 for various reasons, I.A.No.653 of 2016 was filed contending that first petitioner is the crucial witness to establish the case, therefore, sought to permit the first plaintiff to examine himself as P.W.3 by reopening the plaintiff evidence.

The Trial Court upon hearing argument of both the counsel, dismissed I.A.No.653 of 2016 assigning its own reasons, mainly on the ground that no permission was obtained from the Court under Order XVIII Rule 3-A C.P.C.

The petition is of not conveying meaning, since the relief claimed is not clear in the petition. However, no reason was mentioned in the affidavit for recall of P.W.1 and permission to examine the first plaintiff as P.W.3, except contending that the

evidence of first plaintiff is material to decide the real controversy between the parties.

Curiously, the second plaintiff was already examined as P.W.1 and later the witness who is not a party to the suit was examined as P.W.2, now, seeking permission of this Court to examine the first plaintiff as witness. But the Trial Court recorded a finding that, in the absence of any permission under Order XVIII Rule 3-A C.P.C, the petitioner is not entitled to examine himself as witness after examination of witness on their behalf. Even now the petitioner did not seek such leave of this Court under Order XVIII Rule 3-A C.P.C, though it is a curable irregularity. In such case, the Court cannot grant permission to examine the first plaintiff as P.W.3 when the defendant examined their witness as D.W.1 and D.W.2 in examination in chief by filing an affidavit.

Viewed from any angle, in the absence of any permission even subsequent to examining the witness, the first plaintiff cannot be permitted to examine as witness. Therefore, I find no illegality in the order passed by the Trial Court warranting interference of this Court by exercising power under Article 227 of the Constitution of India. Consequently, the civil revision petition is dismissed at the admission stage.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:21.07.2017

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