

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5152 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the petitioner-1st defendant is directed against the docket orders, dated 20.09.2017, of the learned VIII Additional District Judge, Vijayawada, passed in OS.No.181 of 2007.

2. I have heard the submissions of Sri M. Radha Krishna, learned counsel for the petitioner, at the stage of admission. I have perused the material record.

3. Having regard to the nature of the order impugned and the issue involved, this Court is of the considered view that this revision petition can be disposed of at the stage of admission without notice to the plaintiff-1st respondent herein. 2nd respondent is stated to be the 2nd defendant.

4. The facts discernable from the pleadings, material record and the submissions made are as follows: -

The 1st respondent/plaintiff filed the suit against the defendants including the revision petitioner-1st defendant, for partition of the plaint schedule properties. The revision petitioner/ 1st defendant is resisting the suit by filing a written statement. The trial Court settled the following issues for determination in the suit: '(1) Whether the plaintiff is entitled for partition of Plaint A & B schedule property as prayed for? (2) Whether the plaintiff is entitled for future mesne profits of Plaint A & B schedule properties? (3) To what relief? After the plaintiff and his supporting witness were examined as PWs1 & 2, the plaintiff filed a petition seeking permission to adduce rebuttal evidence on the issue on which the onus of proof, according to the plaintiff, is on the defendants. Keeping the said petition pending, the trial Court noted

that no further evidence is proposed by the plaintiff at that stage and closed the evidence of the plaintiff and posted the matter for the evidence of the defendant. Thus, the trial Court did not decide the IA filed by the plaintiff seeking permission for adduction of rebuttal evidence on the issue on which according to the plaintiff the initial onus of proof is on the defendants. Aggrieved thereof, the 1st defendant filed this revision petition.

5. As rightly urged by the learned counsel for the revision petitioner-1st defendant, the trial Court ought to have decided the IA filed by the plaintiff one way or the other before closing the plaintiff's evidence and calling upon the defendants to adduce evidence on their side. Order XVIII Rule 3 of the Code postulates that where there are several issues, the burden of proving some of which lies on the other party, the party beginning may at his option either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the later case like the present case, the party beginning may produce evidence on those issues after the other party like the first defendant herein has produced all his evidence and the other party, that is, the 1st defendant may then reply specifically on the evidence so produced by the party beginning and the party beginning will then be entitled to reply generally on the whole case. In view of the specific provision, the trial Court is obliged under facts and in law to decide the IA one way or the other before closing the plaintiff's further evidence and calling upon the defendants to adduce evidence on their side. In that view of the matter, this Court finds that the request in the revision petition merits consideration and that the order impugned brooks interference.

6. In the result, the Civil Revision Petition is allowed and the impugned docket order is set aside with a direction to the trial Court to hear and dispose of, on merits, the Interlocutory Application filed by the plaintiff seeking permission to adduce rebuttal evidence. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

05.10.2017

Note: Issue CC by 09.10.2017.

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