

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.1431 of 2017

ORDER:

Heard M/s. Bhaskari Advocates, learned counsel for the petitioner. This Civil Revision Petition is disposed of at the stage of admission itself.

2. This Civil Revision Petition is arising out of the order, dated 30.01.2017, in I.A.No.653 of 2016 in O.S.No.112 of 2012 passed by the Senior Civil Judge, Bobbili.

3. The Revision Petitioner is the 2nd defendant and the respondents are the plaintiff and defendants 2 to 8. Originally the suit O.S.No.112 of 2012 was filed for partition of suit schedule property by the plaintiff against his own sisters and brothers. In the said suit, the evidence on the side of plaintiff was completed and at the stage of recording the evidence of defendant No.2, the present application is filed on the ground that defendants 3 to 8 are sailing with the 1st defendant and in case if his evidence is recorded, his defence would be disclosed to defendants 3 to 8 and again he has to give evidence after recording the evidence of defendants 3 to 8.

4. Admittedly, this is a suit for partition filed by the plaintiff against his own brothers and sisters. It is the apprehension of the revision petitioner/defendant No.2, as per the counter allegations, that defendants 3 to 8 are sailing with defendant No.1.

5. Learned counsel for the petitioner submits that the trial Court has not given cogent reasons for dismissing the application. The revision petitioner filed the petition to preserve his right to let in

evidence after recording the evidence of defendants 3 to 8 as defendants 3 to 8 are sailing with defendant No.1.

6. In fact, it is observed by the trial Court that on perusal of the written statements of all the defendants, the contest of all the defendants is one and the same and none of the defendants is sailing with the plaintiff as per the pleadings of the defendants. Therefore, the trial Court felt that it is not necessary to record the evidence of defendants 3 to 8 at the first instance. It is further stated that the evidence of 1st defendant was completed and as per the order of priority, the 2nd defendant's evidence has to be let in. On this ground, the trial Court has dismissed the petition.

7. I.A.No.653 of 2016 was filed under Order XVIII Rule 4 of CPC. It is in respect of recording of evidence of witnesses. Order XVIII Rule 4 reads as under:

“4. Recording of evidence:- (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.”

8. In fact, the trial Court has observed that on perusal of written statements of all the defendants, the contest of all the defendants is one and the same, and none of the defendants are sailing with the plaintiff, as per the pleadings of the defendants. Therefore, the trial Court felt that leading evidence first by defendant Nos.3 to 8 and leading evidence by the petitioner (defendant No.2) later does not arise. It is also observed that the evidence of defendant No.1 was completed in order of the priority, and in turn, defendant No.2 has to lead evidence. On these grounds, the trial Court dismissed the application filed by defendant No.2. The findings of the trial Court do

not require any interference, as they are not suffering with any infirmity or illegality.

9. Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

GUDISEVA SHYAM PRASAD, J

MARCH 20, 2017

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Date:20.03.2017

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