

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5298 of 2015

ORDER :

Heard both sides.

2. Undisputedly, in the main matter in the form of plaint as O.P.No.496 of 2012 filed by Smt.E.Sri Devi against the sole respondent Sri E.Rama Rao is with a prayer for perpetual injunction and by cancellation of the decree (compromise) passed in O.P.No.550 of 2008, dated 12.11.2011 for the same is null and void and not binding on the petitioner/plaintiff and the same is otherwise liable for cancellation on the ground of fraud and undue influence and for costs. The suit is under contest and trial commenced and PWs.1 and 2 were appears and stated examined. It is at this stage, the said plaintiff filed application under Section 151 C.P.C. in the I.A.No.743 of 2015 before the learned Additional Judge, Family Court, Hyderabad, (trial Court) to summon the minor child of them, by name, Kavya, saying for the suit purpose the said Kavya is a crucial witness. The prayer in the suit is to set aside the decree of compromise in O.P.No.550 of 2008. There is nothing even mentioned as to how the witness is crucial atleast relevant for purpose of deciding the suit lis. The lower Court without considering the same simply by observing for formulating point at para 6 of the impugned order, dated 11.10.2015, stated minority of the child is not a ground and the controversy as to the child is with the mother is not a ground and the witness when capable

of giving answers can be examined thereby summoned. That is not the criteria for the learned Additional Judge, Family Court, Hyderabad, to summon a witness, but for to consider whether the witness proposed to be examined if at all chosen to give evidence whether it serves any purpose of relevancy and admissibility of the evidence in relation to the controversy involved in the suit. Having regard to the above, the very order of the lower Court, dated 11.11.2015, in allowing the petition is unsustainable.

3. Accordingly and in the result, the revision is allowed. However, subject to observation that in the event of requirement of such witness, the court after closure of evidence of both sides, can examine as a Court witness with right of cross-examine to both parties and the trial Court shall make every effort for early disposal of the main matter.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

7th December 2017.

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Dr. B. SIVA SANKARA RAO, J