

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**CIVIL REVISION PETITION No.2010 of 2017**

**ORDER:**

1) Aggrieved by the order, dated 28.11.2016, passed in I.A.No.1033 of 2016 in O.S.No.772 of 2011 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed under Section 151 of C.P.C. to reopen the evidence of the plaintiff which was closed on 02.11.2016, was dismissed, the petitioner, who is plaintiff in O.S.No.772 of 2011, filed the present Civil Revision Petition.

2) The petitioner herein is the plaintiff and the respondents herein are the defendants in O.S.No.772 of 2011. For the sake of convenience the parties hereinafter referred to as arrayed in the suit.

3) The facts in issue are as under:

The plaintiff filed O.S.No.772 of 2011 seeking injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment over the plaint schedule property. The said suit was posted to 02.11.2016 for cross-examination of P.W.2 C.Venkatamuni Reddy and also for cross-examination of P.W.1 in connected suits in O.S.Nos.134 and 138 of 2015. As the plaintiff, who is aged about 84 years old, suffering with high blood pressure and high fever, could not attend the Court on 02.11.2016, requested her Advocate to lookafter the case. Incidentally, on that day i.e. on 02.11.2016, the counsel also could not represent the matter as he was out-of-station. He entrusted the matter to his junior Ms.D.Sarada to

represent the case. However, by the time the junior counsel reached the Court, the matter was called and as there was no representation on behalf of the plaintiff, the evidence of P.W.2 was closed and the matter was posted for defendant's evidence. Immediately on 09.11.2016, an application came to be filed seeking to re-open the case for adducing further evidence of P.W.2 on the ground that the plaintiff would be put to irreparable loss and injury if the case is not re-opened. The said application came to be rejected, against which the present Civil Revision Petition is filed.

4) The main ground urged by the learned counsel for the petitioner is that grave prejudice would be caused to the plaintiff if the suit is not re-opened for adducing further evidence on behalf of the petitioner-plaintiff.

5) A perusal of the material placed before the Court would show that one witness by name C.Venkatamuni Reddy filed his affidavit in lieu of chief-examination as PW.2 and it was posted to 02.11.2016 for his cross-examination by the defendants. On that day, the counsel for the plaintiff was not present in the Court. Since PW.2 was not present in the Court and as there was no representation on behalf of the plaintiff, the trial Court closed the evidence of plaintiff. In the absence of any documentary evidence to show that the plaintiff was suffering with high blood pressure and high fever, the Court below rejected the request made. It is to be noted that PW.2 could not be produced before the Court below by the plaintiff as he was suffering with health ailments. Apart from that the record also discloses that on that day, the advocates

boycotted the Courts and none of the counsel were present in the Court.

6) Having regard to the above, the order under challenge is *set aside*, and the suit in O.S.No.772 of 2011 is directed to be re-opened for the purpose of further evidence on behalf of the plaintiff and the trial Court shall fix a date for cross-examination of PW.2 and proceed thereafter in accordance with law.

7) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

8) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

28.04.2017  
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**JUSTICE C.PRAVEEN KUMAR**

