

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.380 of 2017

ORDER :

Respondent Nos. 2 & 3 are served. Respondent No.1 unclaimed is a sufficient service.

2. Heard learned counsel for the petitioner and taken as heard for respondents to decide on merits.

3. The revision is maintained impugning the dismissal order of the lower Court in I.A.No.1422 of 2016 in the pending suit O.S.No.125 of 2008 on the file of the Principal Junior Civil Judge, Avanigadda. The revision petitioner is the plaintiff. He filed the petition before the lower Court with three prayers though in each interlocutory application there must be only one prayer, leave about the Court be got the power out of more prayers to confine to one prayer. The prayer reads as follows:

“..... to Re-open the suit for examination of Chalamalasetty Prabhudas, S/o.Ranga Rao, R/o.Kuchipudi as a witness to confront Ex.A.2 and to recall DW.2 for the cross-examination in the interest of justice or else petitioner/plaintiff shall incur irreparable loss and injury.”

4. The supporting affidavit prayer of him is that defendant No.3 and his son executed a sale deed in favour of YVLJ Rani on 03.02.1996 and it was exhibited in the suit on 19.10.2016 and the southern boundary and western boundary of it mentioned as belongs to defendant No.1. It is nothing but so-call suit passage referred in the

plaint and there is no other passage to reach the R & B road, which is to the East of the passage and the said Ch.Prabhudas is to be examined to prove due execution of Ex.A.2-sale deed and it is also to recall DW.2 (defendant No.2) to confront her with the passage noted in Ex.A.2 supra and thereby it requires re-open.

5. Undisputedly, including from the order of the lower Court, the matter is posted for arguments. It is not even reserved for judgment but for filing of application to reopen is formal, no separate application is even practically necessary to reopen the matter. Subject to that the other two prayers is one for recall of DW.2 and the other to permit to examine Ch.Prabhudas. So far as recall of DW.2 (defendant No.2) concerned, it is in saying only to confront with the description of the document. It is not even a case that DW.2 in his chief-examination denied the very existence of the document that is already exhibited in plaintiff's evidence and any confronting or his denial is only a formal, which no way makes a difference, thereby the petition which contains among the three prayers one is only academic out of the two prayers can be considered only for the purpose of recall of said Ch.Prabhudas. Once the plaintiff want to examine to said Chalamalasetty Prabhudas to prove the due execution of the said document by Ch.Prabhudas about the reference of the boundary in the document as that of defendant No.1 and the lane in question, the trial Court should have been considered though the suit is of the year 2008 instead of dismissal.

6. Having regard to the above, the civil revision petition is allowed, by confining the prayer only to that allowed subject to costs of Rs.2,000/- (Rupees two thousand only) before the trial Court to pay to the any State owned Orphanage of the District, to secure the said witness by the petitioner for the Court to cause examine him either in open Court or by appointing of a Commissioner, as the case may be, within a short period after receipt of a copy of this order.

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

17th November 2017.

mar

Dr. B. SIVA SANKARA RAO, J

