

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL REVISION PETITION Nos.3169 & 3216 of 2017

COMMON ORDER:

These two civil revision petitions are filed by the petitioner/defendant against the orders dated 06.06.2017 in I.A.Nos.98/2017 & 99/2017 in O.S.No.14/2013 on the file of the 1st Additional District Judge, Srikakulam.

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

The petitioner is the defendant. The respondents filed the suit for injunction against the petitioner/defendant. The evidence of the respondents/plaintiffs was concluded. On 12.04.2017 the petitioner/defendant examined herself as DW 1 and the counsel appearing for the respondents/plaintiffs partly cross-examined her and got the matter adjourned to 18.04.2017. On 18.04.2017, the petitioner/defendant, who is aged more than 74 years, could not appear before the Court below and hence the matter was adjourned to 26.04.2017 on terms. On 26.04.2017 also the petitioner/defendant could not appear and it was represented on her behalf that due to sickness she could not appear before the court. The Court below has not only closed the evidence of DW 1, which is partly recorded, but also closed the evidence on behalf of defendant's side and posted the matter for arguments to 29.04.2017.

While the matters stood thus, on 28.04.2017, the petitioner/defendant filed two interlocutory applications, one is for reopening the matter and another is for appointment of an Advocate-

Commissioner to record the evidence of DW 1. The Court below dismissed both these applications, against which, the present two revisions are filed.

The learned counsel for the petitioner/defendant submits that even though sufficient grounds are narrated for non-appearance of the petitioner/defendant before the court on 18.04.2017 and 26.04.2017, the court below has closed the evidence not only of the defendant but also the entire evidence on her behalf. It is further submitted that the petitioner/defendant being lady, aged more than 74 years, was suffering from ailments and hence she could not appear before the court below on the aforesaid dates.

The learned counsel for the respondents/plaintiffs submits that the petitioner/defendant though aged 74 years, she is hale and healthy and she can appear before the court below and give evidence.

Though the petitioner/defendant is said to have been suffering from ailments and she was prevented from attending the court below, but no iota of evidence is produced to that effect.

In view of the facts and circumstances of the case, in the interests of justice, since the suit is for injunction in respect of immovable property and the petitioner is the sole defendant and aged about 74 years, I feel that the court below can be directed to reopen the suit and take up further trial of the matter, however, subject to the petitioner/defendant shall appear before the court below, within a period of one month from today, and complete her evidence and the evidence likely to be adduced on her behalf without fail.

Subject to the above, CRP No.3169/2017 is disposed of and CRP No.3216/2017 is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 01.09.2017
Dsr

Note:

Furnish copy in one week
B/o
Dsr

