

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CIVIL REVISION PETITION No. 758 of 2013

ORDER:

This civil revision petition is filed by the plaintiff, aggrieved by the orders, dated 17.12.2012, passed by the Senior Civil Judge, Repalle, in I.A.No.622 of 2012 in O.S.No.100 of 2008, allowing the said application filed by the defendants under Order XXVI Rule 1 of CPC seeking appointment of an Advocate Commissioner to examine D.W.1 and other witness on their behalf.

Heard the learned counsel on both sides and perused the record.

It has been contended by the counsel for the petitioner/plaintiff that the Court below erroneously allowed I.A.No.622 of 2012 in O.S. No.100 of 2008 by an order, dated 17.12.2012, appointing an Advocate Commissioner and permitting him to cross-examine D.W.1 and examine other witness. It was pleaded by the respondents/defendants before the Court below that one of the defendants had undergone a heart operation and, therefore, it is just and proper to appoint an Advocate Commissioner to examine him in chief as well as for the purpose of cross-examination. They also relied upon a registered Will, dated 17.01.2006. But, they had not produced any Medical Certificate of the proposed witness to prove their case for appointment of an Advocate Commissioner, though Order XXVI Rule 1 of CPC clearly mandates in the explanation to accept a certificate purporting to be signed by a registered Medical

Practitioner as evidence of the sickness or infirmity of any person, without calling the Medical Practitioner as a witness. However, the Court below had mechanically allowed the said application by appointing an Advocate Commissioner. It has been almost 5 years since one of the defendants Sri Rama Koteswara Rao underwent a heart operation and since the issue revolves around a registered Will, dated 17.01.2006, I deem it appropriate that the defendant and the other witness be examined in the Court itself.

Accordingly, the Civil Revision Petition is allowed, the impugned order is set aside, and the Court below is directed to examine D.W.1 and other witness and cross-examine them in open Court.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. There shall be no order as to costs.

ABHINAND KUMAR SHAVILI, J

27th October, 2017
cbs

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



CIVIL REVISION PETITION No. 758 of 2013
(allowed)

27th October, 2017

cbs