

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.3012 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful defendants assailing the order, dated 04.03.2016, of the learned Principal Junior Civil Judge, Chirala, passed in IA.No.158 of 2016 in OS.No.335 of 2009.

I have heard the submissions of the learned counsel for the revision petitioners-defendants and of the learned counsel for the respondent-plaintiff. I have perused the material record.

To begin with, it is to be noted that by the impugned order, the trial Court allowed the application of the plaintiff filed under Order XVIII Rule 3A of the Code of Civil Procedure, 1908, and accorded permission to examine her son in the first instance and directed for her examination at a later point of time. Aggrieved thereof, the defendants are before this Court.

Be it noted that the suit is filed for perpetual injunction to restrain the defendants and their men from interfering with the peaceful possession and enjoyment of the suit schedule property. The defendants are resisting the suit.

The case of the defendants and the submissions made on their behalf, in brief, are that the plaintiff is 70 years old and that the grounds on which the trial Court permitted her to examine her son in the first instance are untenable and that if she is pretty old, it is all the more reason for examining her in the first instance and that no valid grounds are assigned for seeking permission to examine her later after examining her son and that in view of the nature of the relief claimed in the suit, it is essential to examine her in the first instance and that examining the son in the first instance instead of the plaintiff would cause prejudice to the defence of the defendants.

Per contra, learned counsel for the plaintiff initially supported the impugned orders. However, he filed a memo before the Registry *vide* USR.No.6609, dated 25.10.2017, stating that as of now the plaintiff has crossed 80 years of age and that she is totally bed ridden and lost her sight as well as memory and, therefore, she will not be examined as a witness in the suit and that in that view of the matter, the plaintiff has to necessarily examine her son as a witness on her side as she is not in a position to depose in the matter.

On the above analysis, this Court finds that the revision petition can be disposed of with appropriate directions.

Accordingly, the Civil Revision Petition is disposed of permitting the plaintiff to examine her son, however, recording her undertaking that she will not be examined as a witness in the suit at a later point of time for the reasons stated in the afore-stated memo.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision, shall stand closed.

27.10.2017
Vjl

M. Seetharama Murti, J