

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5952 of 2017

ORDER:

This Civil Revision Petition is filed assailing the order dt.21.06.2017 in EA.No.146 of 2017 in EA.No.64 of 2016 in EP.No.136 of 2012 in O.S.No.320 of 1984 of the Additional Senior Civil Judge, Tirupati.

2. Petitioner is the Judgment Debtor No.6 in the said proceedings. The said suit was filed by the 1st respondent for partition and separate possession and it was decreed.

3. E.P.No.136 of 2012 was filed by the respondents for division and allotment of 1/6th share.

4. Petitioner herein filed E.A.No.64 of 2016 under Section 47 of Civil Procedure Code to decide the legality and executability of the decree.

5. Respondent No.1/Decree Holder was examined in chief in the E.A., and for cross-examination it was posted to 21.02.2016. Petitioner contends that he went to Madurai for cataract operation and after he returned from Madurai, he approached his counsel, who informed that the Court closed the cross-examination and posted the matter on 01.03.2017 for arguments.

6. Petitioner states that he then filed E.A.No.146 of 2017 for recall of 1st respondent for the purpose of cross-examination.

7. This application was opposed by the 1st respondent stating that no material had been filed by the petitioner in support of his plea that he underwent the cataract operation at the time when the matter was posted for cross-examination of the 1st respondent.

8. By order dt.21.06.2017, the Court below dismissed the EA.No.146 of 2017 on the ground that petitioner had been given sufficient opportunity but he did not avail of it and had not adduced any evidence to show that he went to Madurai for eye checkup and cataract operation.

9. Assailing the same, this Revision is filed.

10. Counsel for the petitioner contends that petitioner subsequently filed EA.No.200 of 2017 with medical evidence showing that he was admitted in a hospital at Tirupati on 11.11.2016 for undergoing cataract operation, which was done on 11.11.2016 and he was discharged on 12.11.2016, and prayed to recall the 1st respondent for cross-examination, but the Court below dismissed the same saying that he had not questioned the order in EA.No.146 of 2017; and therefore this Court ought to entertain E.A.No.146 of 2017, allow it, and give

opportunity to the petitioner to cross-examine the 1st respondent.

11. Admittedly, the cataract surgery on the petitioner was on 11.11.2016 and the matter was posted to 21.02.2017 for cross-examination of the 1st respondent. Thus the date for cross-examination was more than three months after the alleged cataract surgery. Thereby, even if the said surgery is taken into account, it cannot be said that the petitioner was some how disabled in cross-examining the 1st respondent.

12. In any event, the cross-examination of a witness is to be done by his counsel and not by the party, and what prevented the petitioner from briefing his counsel regarding the cross-examination of the 1st respondent, is not explained by the petitioner.

13. Therefore, I do not see any merit in this Civil Revision Petition and it is accordingly dismissed at the stage of admission. No costs.

14. Consequently, miscellaneous petitions, pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

07th November, 2017.
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