

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.6427 of 2017

ORDER

This revision petition under Article 227 of the Constitution of India is filed challenging the propriety and legality of the order dated 18.09.2017 passed in I.A.No.981 of 2017 in O.S.No.312 of 2009 by the Senior Civil Judge, Khammam, dismissing the application filed under Section 151 of C.P.C., to eschew the examination-in-chief by way of affidavits under Order 18 Rule 4 (2) of C.P.C., of D.Ws.2 and 3.

2. The petitioner herein is plaintiff in O.S.No.312 of 2009 filed for partition. In the said suit, the defendants placed reliance on Exs.B1 and B2. In support of their case, Ex.B1-settlement deed (partition deed, Partikathu) dated 01.04.1987 was initially marked and later, on application, it was rejected and the respondents/defendants proposed to examine D.Ws.2 and 3 only in support of the said partition deed-Ex.B1.

3. It is the contention of the petitioner that when Ex.B1 was rejected by the trial Court exercising power under Order 13 Rule 3 of CPC, the examination of D.Ws.2 and 3 would not serve any purpose and prayed to eschew their examination-in-chief from the evidence.

4. The affidavits of D.Ws.2 and 3 filed under Order 18 Rule 4(2) of C.P.C., are placed on record. D.W.2 is the attestor and D.W.3 is the scribe of Ex.B1 and the purpose of producing these witnesses is only to prove the execution of Ex.B1, which was rejected by the trial

Court exercising power under Order 13 Rule 3 of CPC. A perusal of the said affidavits would show that the purpose of examination of D.Ws.2 and 3 is only to prove execution of Ex.B1. When Ex.B1 was rejected by the trial Court, the question of their examination does not serve any purpose. However, on that sole ground, the evidence of these witnesses could not be eschewed. Though it would not serve any purpose, the evidence of witnesses can be eschewed only when the witnesses were not tendered for cross-examination not otherwise. Therefore, I am not inclined to interfere with the findings recorded by the trial Court. However, the trial Court may or may not consider the evidence of D.Ws.2 and 3 because Ex.B1 was already rejected.

5. Hence, the Civil Revision Petition is dismissed, permitting the petitioner to raise any ground with regard to appreciation of evidence of D.Ws.2 and 3. No order as to costs.

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

M. SATYANARAYANA MURTHY, J

22nd December, 2017
sj