

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISION PETITION Nos.6101 & 6098 OF 2017

COMMON ORDER:

C.R.P.No.6101 of 2017 and C.R.P.No.6098 of 2017 are filed by defendant No.2 in O.S.No.35 of 2010 on the file of the I Additional District Judge, Kurnool under Article 227 of the Constitution of India. These revisions challenge the order, dated 29.08.2017, in I.A.No.255 of 2017 in O.S.No.35 of 2010 and the order, dated 29.08.2017, in I.A.No.256 of 2017 in O.S.No.35 of 2010.

2. Since both these revisions are inter-related and arising out of the same suit, this Court deems it appropriate to dispose of these revisions by way of this common order.

3. Heard Sri A.Venkatesh, learned counsel for the petitioner/defendant No.2, and Sri A.Chandraiah Naidu, learned counsel for respondent Nos.1 and 2/plaintiffs.

4. Respondent Nos.1 and 2 herein are the plaintiffs in the said suit instituted for the relief of declaration of title in respect of the schedule property. In the said suit, defendant No.2, who is the brother of respondent No.4 herein, filed I.A.No.255 of 2017 praying for re-opening of the plaintiffs' evidence for the purpose of cross examination of P.W.1. He also filed I.A.No.256 of 2017 praying for recalling P.W.1 for cross-examination on behalf of defendant No.2. The learned Judge, by way of an order, dated 29.08.2017, dismissed I.A.No.255 of 2017 and as I.A.No.255 of 2017 was

dismissed, I.A.No.256 of 2017 was also dismissed. Challenging the same, defendant No.2 filed the present revisions.

5. According to the learned counsel for the petitioner, the orders impugned are highly erroneous and contrary to law. It is the further submission of the learned counsel that without properly taking into consideration the material available on record, the learned Judge dismissed the applications filed by the petitioner. It is the further submission of the learned counsel that the defendants in the suit are represented by different advocates and in the event of the impugned orders being allowed to continue, the same would result in depriving the petitioner's legitimate right to cross examine P.W.1. It is also submitted that the question of filling up the omissions, if any, also does not arise, as the petitioner herein has never cross examined P.W.1 earlier.

6. On the contrary, it is contended vehemently by the learned counsel for respondent Nos.1 and 2 that in view of the lapses on the part of the petitioner in approaching the Court for the present relief earlier along with defendant No.1, who filed I.A.No.80 of 2016, and defendant No.3, who also filed an application for similar relief, the petitioner herein is not entitled for any indulgence of this Court. It is also the submission of the learned counsel that in view of absence of due diligence on the part of the petitioner, interference of this Court is unwarranted under Article 227 of the Constitution of India. It is further argued that since practically the case of all the defendants is one and the same, the learned Judge is perfectly justified in rejecting the plea of the petitioner herein.

7. There is absolutely no dispute that the defendants in the present suit are represented by different advocates. In the affidavit filed in support of the present applications, it is stated that earlier, the petitioner herein felt that there is no need to cross examine P.W.1 and proceeded to cross examine P.W.3. In the said affidavits, the petitioner also stated that certain crucial facts, which have bearing on the case, came to light, which warranted to file the present applications. It is also brought to the notice of this Court during the course of hearing that on the application filed by defendant No.3, the case now stands posted to 18.12.2017 for the purpose of cross examination of P.W.1 on behalf of defendant No.3. Since the properties involved in the present suit are valuable immovable properties situated within the Kurnool Municipal Corporation limits and since substantial rights of the parties are involved, and as the matter is coming up for cross examination of P.W.1 on 18.12.2017 on the application filed by defendant No.3, this Court deems it appropriate, in the facts and circumstances of the case, to permit the petitioner herein also to cross examine P.W.1 on the said date subject to certain terms.

8. For the aforesaid reasons, both the Civil Revision Petitions are allowed, setting aside the order, dated 29.08.2017, in I.A.No.255 of 2017 in O.S.No.35 of 2010 and the order, dated 29.08.2017, in I.A.No.256 of 2017 in O.S.No.35 of 2010, and consequently, I.A.No.255 of 2017 in O.S.No.35 of 2010 and I.A.No.256 of 2017 in O.S.No.35 of 2010 are allowed. The petitioner/defendant No.2 herein is permitted to recall P.W.1 and cross examine him on 18.12.2017 subject to payment of costs of Rs.5,000/- (Rupees five thousand only) to the plaintiffs. It is also

made clear that the cross examination shall be completed by the petitioner on 18.12.2017 only.

9. Miscellaneous Petitions pending, if any, in these Civil Revision Petitions shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 15.12.2017

Note:- Furnish C.C. today.

B/O
AMD



THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



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Date: 15.12.2017

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