

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.6811 of 2017

ORDER :

Heard both sides and perused the grounds of the revision and the impugned order of the lower Court.

2. The impugned order of the Additional Judge-cum-VI Senior Civil Judge, Hyderabad, dated 20.11.2017, in a common order in I.A.Nos.496 and 497 of 2017, itself from the two applications are filed i.e., I.A.No.496 of 2017 is filed to recall DW.1 for purpose of further cross-examination to confront the deposition recorded of him in O.S.No.937 of 2009 and I.A.No.497 of 2017 is filed to receive the document i.e., chief affidavit and cross-examination of G.Balaiah as PW.1 in O.S.No.937 of 2009, the present revision is confined to I.A.No.496 of 2017 dismissal order, out of the said common order in allowing the I.A.No.497 of 2017, maintained by the plaintiff/petitioner before the lower Court and revision petitioner herein. The respondents are the defendants. The lower Court is no doubt right in referring to Section 33 of the Indian Evidence Act, 1872, (for short, 'the Act') saying deposition of a living person, but for to contradict or confront (as per Sections 145, 155 clause (3) of the Act) the person who deposed since alive is inadmissible. However, so far as receiving of the document concerned, it is only under Order VII Rule 14 C.P.C. of the late filing rightly received, since it is only a public document deposition of a person and the certified copy of the

same. The lower Court is right in dismissing I.A.No.496 of 2017 for the same cannot be marked through another witness for not within the purview of Section 33 or 32 of the Act. Once such is the case, PW.1 in O.S.No.937 of 2009 is no other than DW.1 in the present suit O.S.No.1280 of 2009, the Court should not have been dismissed recall of DW.1 for purpose of cross-examination of him with reference to that received deposition copy of O.S.No.937 of 2009.

3. Having regard to the above, the revision is allowed by recall of DW.1, for the plaintiff to cross-examine DW.1 with his previous deposition as PW.1 in O.S.No.937 of 2009 and to the portion admitted, if any, to mark out of it. The lower Court shall complete the exercise within fifteen days from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, shall stand dismissed.

No order as to costs.

Dr. B. SIVA SANKARA RAO, J

15th December 2017.

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