

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.361 and 396 of 2018

COMMON ORDER:

These two Civil Revision Petitions are being disposed of by this common order as the petitioner in both revision petitions is the plaintiff in O.S.No.169 of 2011 on the file of Principal Senior Civil Judge, Nellore.

2. The aforesaid suit was filed for declaring the right of the petitioner/plaintiff in respect of the plaint schedule property to an extent of 22 ankanams site bearing D.No.24/774 (new D.No.2412/58) situated at Batwadipalem, Mulapeta, Nellore District, with specified boundaries. The petitioner herein filed I.A.No.679 of 2017 seeking permission to eschew his chief-affidavit filed earlier. He also filed I.A.No.680 of 2017 to permit him to appear through General Power of Attorney. When both applications were dismissed by separate orders on 06.12.2017, the above revision petitions were filed.

3. C.R.P.No.361 of 2018 arises out of the order in I.A.No.679 of 2017, whereas C.R.P.No.396 of 2018 arises out of order in I.A.No.680 of 2017.

4. In support of the application in I.A.No.679 of 2017, the petitioner/plaintiff stated that he filed the affidavit in lieu of his chief-examination on 22.06.2017 and since he was a heart patient, he was discharged from hospital on 16.06.2017 and thereafter only he filed the said affidavit. Though the petitioner went to the office of his counsel, he was unable to give cogent replies and instructions to his counsel, and in those circumstances, he gave General Power of Attorney to his brother

and got it registered on 06.07.2017 to give evidence on his behalf. Accordingly, he sought permission to eschew his affidavit.

5. The affidavit in support of I.A.No.680 of 2017 is also to the same effect and there the petitioner prayed for seeking permission to the General Power of Attorney to appear on his behalf. A counter-affidavit was filed by the 2nd defendant/2nd respondent herein denying the said averments. The 2nd respondent specifically stated that the medical certificate was fabricated one since it showed the age of the petitioner as 45 years and in the affidavit, it was mentioned as 49 years. He was advised rest for only one month and now he is hale and healthy and capable of attending the Court. In fact, he was present before the Court on 10.07.2017, and in view of boycott by the advocates', the suit was adjourned to 18.07.2017. The present petitions were not *bona fide*.

6. In view of above averments and counter averments, the trial Court noticed that the petitioner was advised rest till 17.07.2017 and he is capable of attending the Court and is capable of giving evidence. The trial Court, after hearing the arguments, felt it not desirable to eschew his affidavit and examine the General Power of Attorney as substitute for his evidence. Similarly, the other application in I.A.No.680 of 2017 was also dismissed.

7. I have carefully perused the petition, counter-affidavit and the orders passed by the trial Court. In the facts and circumstances of the case, though those orders do not warrant any interference from this Court, in view of affidavit already filed by the petitioner in lieu of chief-examination, it is open to the petitioner/plaintiff to appear before the Court for the purpose of cross-examination or he can file an appropriate

application for appointment of an Advocate Commissioner for the said purpose.

8. Accordingly, these two Civil Revision Petitions are dismissed. Miscellaneous petitions, if any, pending in these two revision petitions are closed. There shall be no order as to costs.

MARCH 9, 2018
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A.RAMALINGESWARA RAO, J



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Date: 09.03.2018

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