

CIVIL REVISION PETITION No.3015 of 2017

ORDER:

This revision is filed by the petitioner/plaintiff, aggrieved by the order dated 15.06.2017 in I.A.No.165 of 2017 in O.S.No.118 of 2014 passed by the Senior Civil Judge, Shadnagar.

2. The revision petitioner herein, who is the plaintiff filed the above suit for partition of the plaint schedule property. The suit is originally of the year 2009 as O.S.No.57 of 2009 on the file of the Principal Senior Civil Judge at Mahabubnagar, later, on transfer, renumbered as O.S.No.118 of 2014.

3. It is at the fag end of the arguments, after plaintiff's evidence and in the course of defendants' evidence, after DW1 examined, chief examination affidavit of DW.2 filed and taken on oath on 28.02.2017 and posted for cross examination, at request of the learned counsel for the plaintiff to 28.04.2017. On that day, for no cross examination done, the evidence of the witness cross examination was closed. It is to recall DW.2 by permitting for cross examination, application in I.A.No.165 of 2017 was filed on 03.06.2017 only.

4. The affidavit averments show that DW.2 could not be cross examined by plaintiff on 28.04.2017, as he was rushed to Sholapur, Maharashtra State, in relation to the last rites/ funeral of a close relative and later he came to know about the closure of evidence of defendants and filed the said I.A. with no lapse of

time. In the lower Court covered by the impugned order of dismissal dated 15.06.2017 in I.A.No.165 of 2017 supra, it is argued as if the date is wrongly noted, which is lacking in the very affidavit supra.

5. However, the fact remains that there is no testing of the evidence of DW.2 in chief examination from the plaintiff by cross examination, which is a crucial aspect. Hence, to sub-serve the ends of justice, instead of dismissal, the lower Court could have been allowed the said I.A. within a time frame to complete by imposing heavy costs.

6. Having regard to the above, this Civil Revision Petition is allowed by setting aside the order in I.A.No.165 of 2017 in O.S.No.118 of 2014 and allowing I.A.No.165 of 2017 for cross examination of DW.2 by the plaintiff, within a period of one week from the date of receipt of copy of this order or by such date to be fixed by trial Court and subject to costs of Rs.5,000/- (Rupees Five thousand only) payable by the plaintiff to the defendants. The trial Court shall make every endeavour for early disposal of the suit.

7. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

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JUSTICE Dr. B.SIVA SANKARA RAO

Date: 03.01.2018

Note:

Issue C.C. tomorrow.

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