THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.430 AND 548 OF 2018

COMMON ORDER:

Heard learned counsel for the petitioner.

The petitioner and the respondent in both the Civil Revision Petitions is one and the same.

The petitioner is the plaintiff in O.S.No.158 of 2009 on the file of the III Additional District Judge, Nellore. The suit was filed for declaring the sale deed, dated 01.04.2005 in favour of the defendant in respect of vacant house site bearing plot Nos.12 and 13 in Survey No.1943 in Nellore Bit-I Area, Nellore, SPSR Nellore District, as null and void, and for consequential perpetual injunction restraining the defendant from dealing with the said property. The evidence of the plaintiff as well as the defendant was completed on 05.01.2018 and the case was posted for arguments on 09.01.2018. At that stage, the plaintiff filed I.A.No.146 of 2018 seeking to send Ex.A.6 to handwriting expert for comparing the same with the admitted handwriting and signatures marked as Exs.A.4 and B.4, along with disputed signatures. When the said application was dismissed by the trial Court by an order dated 09.01.2018, C.R.P.No.548 of 2018 is filed. The plaintiff also filed I.A.No.156 of 2018 seeking to re-open the case posted for arguments and allow the plaintiff to summon Y.Radhakumar Reddy. When the said application was also dismissed by the trial Court by an order dated 09.01.2018, C.R.P.No.430 of 2018 is filed.

The affidavit filed in support of the application in I.A.No.146 of 2018 in O.S.No.158 of 2009, reads as follows.

> I submit that the above case D.W.1, the defendant herein was examined on 02.01.2018 and during the cross-examination, I confronted the witness by showing the deposition Y.Radhakumar Reddy, husband of D.W.1, deposed on her behalf in O.S.3/2006

> on the file of the V Additional District Judge, Nellore. As the husband of D.W.1 is present before the Court on that day and the defendants requested time for further evidence, this Hon'ble Court has not marked the deposition as Exhibit as the same can be marked through husband of D.W.1, Y.Radhakumar Reddy. D.W.1 admitted that her husband is looking after all the affairs on her behalf, even he deposed on her behalf in O.S.3/2006. The husband of D.W.1, who deposed on behalf of D.W.1, in O.S.3/2006, which is connected to the present case. The husband of D.W.1 now intentionally avoided to come into witness box, even though he accompanied D.W.1 and presented before the Hon'ble Court on 27.12.2017 and on 02.01.2018. Even though the defendants requested for further evidence, but surprisingly they have not examined Y.Radhakumar Reddy, the scribe of A.6 nor any other witness on 05.01.2018. The evidence of Y.Radhakumar Reddy is very crucial in this case to prove the bonafides of Ex.A.6. The said Y.Radhakumar Redy scribed A.6 letter and signed the same. He signed as witness in sale deed marked as Ex.A.4 and Special Power of Attorney marked as Ex.B.4. It is just and necessary to send the Ex.A.6 to forensic expert to prove the bonafides. The petitioner is having good case on merits. There is no wilful latches or negligence on part of the petitioner/defendant.

A reading of the above affidavit discloses that Ex.A.6 was marked on behalf of the plaintiff and the present application is filed merely on the basis of non-examination of the husband of D.W.1. It is well settled that it is for the plaintiff to prove his case and ample opportunity was given to the plaintiff and there is no allegation with regard to the lack of opportunity. Further, Ex.A.6 was produced by the plaintiff only. If the plaintiff thought that the said document ought to be verified by the handwriting expert, he should have taken steps at the relevant point of time at least before the closure of evidence of defendant. When the case is posted for arguments, the plaintiff filed the present applications and the lower Court did not exercise the discretion and dismissed the applications on the ground that the evidence of the plaintiff was closed on 08.12.2017 and at the stage of arguments, the applications were filed. It is also observed that since the

case is of pre 20102, it does not deserve to be allowed. In the overall circumstances of the cases, this Court is not inclined to interfere with the discretion exercised by the trial Court in dismissing the applications.

The Civil Revision Petitions are accordingly dismissed. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

A.RAMALINGESWARA RAO, **J**

02.02.2018
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