

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.816 of 2018

ORDER:

The petitioner herein is the plaintiff in O.S.No.4 of 2016 on the file of Junior Civil Judge, Udayagiri. The said suit was filed for permanent injunction. After examining the petitioner as P.W.1, the case was posted to 10.10.2017 for further evidence. Thereafter, when the petitioner and his counsel were absent, the petitioner's evidence was closed. Subsequently, the defendant was examined as D.W.1 and his evidence was closed on 06.12.2017. The petitioner, who is the plaintiff in the suit, filed the present application on 07.12.2017, to permit him to adduce further evidence on his behalf and when the said application was dismissed, the present Civil Revision Petition is filed.

2. The only reason shown in the affidavit filed in support of the petition is that the petitioner could not secure witnesses within the time prescribed by the Court below and he is suffering from old age ailments. There is no explanation by the petitioner for not filing the application immediately after 10.10.2017 when his evidence was closed, but, he waited till completion of defendant's evidence on 06.12.2017.

3. It is to be noted that the defendant is also aged about 73 years. The evidence on behalf of both sides was completed and at that stage the present application is filed. The trial Court noticed that the petitioner did not choose to file an affidavit of the proposed witnesses in order to give him an opportunity and the affidavit filed in support of the application did not indicate names of witnesses. The application was dismissed with the following observations:

“It is an admitted fact that even by this time the petitioner did not choose to file the affidavit of proposed witness to give him an opportunity to adduce further evidence. Moreover, there is no whisper in the affidavit about the list of witnesses and about the particulars of the facts is to be produced before this Court. When the defendant witnesses were examined and matter was posted for the arguments it is incumbent upon the petitioner to give specific particulars about the list of witnesses proposed to be examined and also particulars of the facts which are to be proved by him as otherwise it will leads to denova trial. Moreover, I do not understand why the plaintiff kept silent even after cross-examination of the defendant’s witnesses and as such the reason assigned by the petitioner that he is suffering from ill health and could not secure the evidence is not a valid and acceptable reason to give him an opportunity at the fag end of the matter. If at all this petition is allowed at this stage it will leads denova trial as this Court has to give an opportunity to defendant also to adduce further evidence. Hence, there are no merits in the petition and the same is liable for dismissal.”

4. I have carefully perused the averments made in the affidavit filed in support of the petition and the order passed by the trial Court. The order passed by the trial Court is just and proper in the in the facts and circumstances of the case and does not warrant interference of this Court.

5. Accordingly, the Civil Revision Petition is dismissed. Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

FEBRUARY 23, 2018

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Date: 23.02.2018

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