

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.952 OF 2018

ORDER:

The petitioners are defendants in O.S.No.174 of 2010 on the file of the III additional District Judge, Nellore. The suit was filed by the respondent herein for declaring right, title and ownership of the plaint schedule item No.1 property and for consequential permanent injunction. It appears that the evidence on behalf of the plaintiff was completed and when the matter was posted to 21.12.2017 for evidence of the defendants, the defendants did not turn up, but filed applications in I.A.Nos.28 and 29 of 2018 to reopen the case and recall P.W.5 for cross-examination respectively on behalf of the defendants. The said applications were dismissed by separate orders, dated 09.01.2018 by the learned Additional District Judge. Challenging the order passed in I.A.No.29 of 2018, the present civil revision petition is filed.

The 19th defendant filed an affidavit in support of the said application in I.A.No.29 of 2018 to recall P.W.5 for cross-examination stating that the plaintiffs filed chief examination affidavit of P.W.5 and case was posted to 21.12.2017 for cross-examination of P.W.5 on payment of costs of Rs.300/-. He further stated that it is the season for Tobacco cultivation and the said cultivation is going on and that he and other petitioners could not come and give instructions to their advocate to cross-examine P.W.5. He further stated that on 21.12.2017, he could not come and his advocate also did not appear due to ill-health and in those circumstances, the evidence of P.W.5 was closed and posted the case for evidence of the defendants. Thereafter, the 19th defendant appears to have enquired with the advocate appearing for them and noticed that the case was posted for their evidence.

A counter was filed by the plaintiff stating that it is absolutely false to state that the chief examination affidavit of P.W.5 was filed and the case was posted to 21.12.2017 for cross-examination of P.W.5 on payment of costs of Rs.300/-. As a matter of fact, the affidavit in lieu of chief examination of P.W.5 was not at all filed in the Court. It is further stated that the counsel for the defendants reported no instructions on behalf of the defendants in public court and his alleged absence on 21.12.2017 was not correct. Even then the Hon'ble Court was pleased to give an opportunity to adduce evidence on behalf of the defendants. Instead of filing chief examination affidavits on behalf of the defendants, they filed the present application to re-open for cross-examination of P.W.5. In the light of the above averments, the trial Court passed the following order in I.A.No.28 of 2018. But no separate reasoned order was passed in I.A.No.29 of 2018 but it was dismissed. The order in I.A.No.28 of 2018 reads as follows:

“This petition filed under 94(e) of C.P.C., by the petitioners/defendants to reopen the case posted for arguments to enable the defendants to cross-examine the P.W.5 and to adduce their evidence and for costs.

Heard, up to P.W.4 was examined, there is no evidence of P.W.5 to reopen and recall. Hence, this petition is dismissed.”

In the normal circumstances, this Court would have called for the record to verify as to what has happened on 21.12.2017 but since the learned counsel for the petitioners herein stated that the case is posted to 16.02.2018 for pronouncement of Judgment and the suit is of the year 2010, this Court did not adopt such course. In the present case, even though a copy application was made ready on 31.01.2018, this present civil revision petition is moved by way of lunch motion one day before the suit posted for Judgment. This Court sees no *bona fides* on behalf of the defendants. In the light of the averments in the affidavit and counter

affidavit, this Court feels that the order passed by the trial Court dismissing the application to recall non-existent evidence of the P.W.5 is proper and correct and does not interfere with the same.

The civil revision petition is accordingly dismissed. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

A.RAMALINGESWARA RAO, J

15.02.2018
pln

