

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1776 of 2018

ORDER:

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed challenging the order dt.01-03-2018 in I.A.No.112 of 2018 in O.S.No.117 of 2011 of the Senior Civil Judge, Sathupally.

3. The petitioner in this Revision Petition is 3rd defendant in the suit. The suit was filed by 1st respondent seeking relief of partition of the plaint schedule property, mandatory injunction and for perpetual injunction in the year 2011.

4. After the Written Statement was filed by the petitioner herein, who is 3rd defendant in the suit, the trial commenced and the evidence on the side of 1st respondent/plaintiff was concluded. Thereafter, the matter was coming up for evidence of petitioner/3rd defendant who was examined as D.W.1. The matter was then posted for further evidence on the side of the petitioner, since defendant Nos.1 and 2, who are sons of 1st respondent, were set *ex parte* and were not contesting.

5. At this stage, the petitioner filed I.A.No.112 of 2018 for summoning the Secretary of the Aswaraopeta Gram Panchayat to give evidence alleging that he had obtained a permission from the said Gram Panchayat and constructed the building in the property which

had been sold to him by defendant Nos.1 and 2. Petitioner contended that defendant Nos.1 and 2 and their brothers gave no objection before Gram Panchayat authorities prior to grant permission.

6. Counter affidavit was filed by 1st respondent/plaintiff opposing this application stating that the petitioner did not file any list of witnesses before starting evidence as mandated by the CPC and the witness sought to be examined, not being a party to the suit proceedings, there is no necessity for the Court to record his evidence.

7. By order dt.01-03-2018, the Court below dismissed the said application. It held, agreeing with 1st respondent, that the application was made only to drag on the matter and that the proposed witness was not shown as party to the suit proceedings or mentioned in the list of witnesses to be examined on the petitioner's behalf.

8. Assailing the same, this Revision Petition is filed.

9. Learned counsel for the petitioner contends that the evidence of the Panchayat Secretary is material in order to decide the suit since defendant Nos.1 and 2 admitted that they have no objection before the Gram Panchayat for granting building permission to the petitioner and that this factor has not been taken into account by the Court below.

10. Admittedly the suit is one for partition and for mandatory and temporary injunction. The issue in the suit is whether there was a partition in the suit schedule property, whether the 1st respondent has a

share therein, and whether there was an alienation by the defendant Nos.1 and 2, her sons, in favour of 3rd respondent without there being any valid partition in law.

11. The Secretary, Gram Panchayat cannot throw any light on this issue since he is not a family member of the family of the 1st respondent and defendant Nos.1 and 2.

12. Therefore, I am of the opinion that the application filed is only to drag on the suit, and the witness in question is not at all a necessary witness for examination in the Court in the said suit. Also the permission granted to the petitioner by the said Gram Panchayat would be evidenced by a document which can as well be marked by the petitioner.

13. I therefore see no reason to interfere with the order passed by the Court below dismissing I.A.No.112 of 2018.

14. Therefore, the Civil Revision Petition is dismissed at the admission stage. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-03-2018
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