

SMT. JUSTICE T.RAJANI

C.R.P.Nos.1775 AND 1780 OF 2018

COMMON ORDER:

C.R.P.No.1775 of 2018 is preferred by the petitioners, who are defendant Nos.16 to 18 before the Court below, assailing the order, dated 05.03.2018, passed in I.A.No.398 of 2017 in O.S.No.336 of 2009 by the Principal Senior Civil Judge, Mancheri, by which, the I.A. filed under Order XVIII Rule 3-A read with Section 151 C.P.C. seeking to permit the petitioners to get themselves examined as witnesses at a later stage, after completion of examination of their witnesses in the suit, was dismissed.

2. Initially, the present I.A. was dismissed by the Court below on 29.08.2017. Aggrieved by the same, the petitioners preferred C.R.P.No.4626 of 2017 and this Court, allowed the said revision petition and remitted the matter to the Court below to dispose of the I.A. in accordance with law, keeping in mind, the law declared by the Division Bench of this Court in **Devarapalli Pattabhi Ramaiah v. Devuluri Lakshmi Prasanna**¹. By virtue of the impugned order, the Court below, after considering the said ruling, dismissed the I.A. once again.

3. The ruling in the aforesaid judgment is to the following effect:

“Rule 3-A of the Code of Civil Procedure was introduced by Act 104 of 1976 into the Code of Civil Procedure. Perusal to the recommendations of the Law Commission in the 54th report with an intention to prevent the notorious practice indulged in by litigants in

¹ 1997 (6) ALT 475 (D.B.)

examining other witnesses first and later covering up the gaps by the examination of the parties themselves later, to substantiate their case. If that is the mischief sought to be remedied by the Amended Rule 3-A of the Order 18 of the Code of Civil Procedure, the order of the examination of such of the defendants who wish to examine themselves as witnesses in support of their defence cannot be left to the choice of the plaintiff.”

4. Learned counsel for the petitioners, in this case, submits that in fact the chief affidavits of the witnesses, whom they proposed to examine prior to their own examination, were filed by respondent No.1/plaintiff and later on, they were eschewed and that if those witnesses come and testify the fact of oral partition, there would not be any necessity for them to examine themselves. But, the reason put forth by the learned counsel for petitioners does not seem to be cogent. They can as well testify their case, in spite of the fact that the said witnesses would depose about the oral partition. The petitioners do not make out any reasons or ground, which would take themselves out of the doubt expressed by this Court in the above ruling and there is any amount of scope to infer that the said permission sought for by the petitioners is with an intention to fill up the lacunas, if there be any, in the evidence of the proposed witnesses. Hence, this Court does not find any irregularity in the order of the Court below.

5. Accordingly, C.R.P.No.1775 of 2018 is dismissed. It is made clear that the petitioners are at liberty to summon the said witnesses and examine them as witnesses on their behalf, if the law permits.

6. C.R.P.No.1780 of 2018 is preferred by the very same petitioners in C.R.P.No.1775 of 2018 assailing the order, dated 05.03.2018, passed in I.A.No.418 of 2017 in O.S.No.336 of 2009 by the Principal Senior Civil Judge, Mancherial, by which, the I.A. filed under Order XVI Rule 1 read with Section 151 C.P.C. to summon the witnesses along with concerned records, was dismissed.

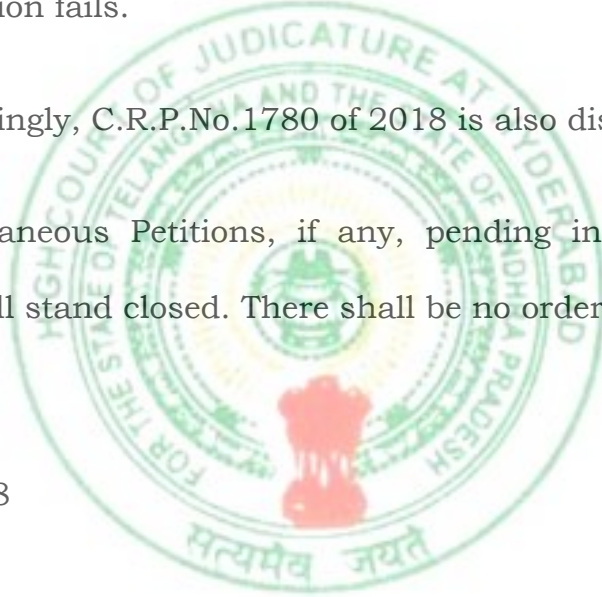
7. Consequent to the dismissal of C.R.P.No.1775 of 2018, this revision petition fails.

8. Accordingly, C.R.P.No.1780 of 2018 is also dismissed.

Miscellaneous Petitions, if any, pending in these revision petitions shall stand closed. There shall be no order as to costs.

July 06, 2018
MD

T.RAJANI, J



SMT. JUSTICE T.RAJANI



C.R.P.Nos.1775 AND 1780 OF 2018

July 06, 2018

MD