

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition Nos.4485 and 4500 of 2017

Common Order:

Aggrieved by the dismissal of two applications one for reopening and another for recalling the handwriting expert for cross-examination, the plaintiff in a suit for partition has come up with the above civil revision petitions.

2. Heard the learned counsel on both sides.

3. The defence to the suit filed by the petitioner herein for partition was that the petitioner relinquished his share in the suit property under a registered document Ex.B-1. Ex.B-1 was sent for examination by the handwriting expert and he has given his opinion.

4. Thereafter, the 5th defendant filed an application in I.A.No.236 of 2017 for appointment of a Commissioner to record the evidence of the handwriting expert. The application was allowed and an Advocate was appointed. The Advocate Commissioner recorded the evidence of the handwriting expert in chief-examination on 23-7-2017 and posted the matter to 05-8-2017 for cross-examination. The counsel for petitioner made a request for adjournment, but the same was rejected and the Commissioner returned the Warrant.

5. Thereafter, the petitioner filed two applications, one for reopening and another for recalling the handwriting expert for cross-examination. Both these applications were

dismissed by the Trial Court forcing the petitioner to come up with the above revisions.

6. The petitioner has explained the reasons as to why his counsel could not be present on 05-8-2017. The only occasion when the petitioner sought adjournment was 05-8-2017. Therefore, the petitioner cannot be held guilty of protracting the proceedings. At the most, the petitioner can be visited with costs.

7. Therefore, both the civil revision petitions are allowed, the orders of the Trial Court are set aside and the applications are allowed. The Court below shall issue Warrant of Commission afresh to the same Advocate Commissioner. The Advocate Commissioner shall fix a date after ascertaining the convenience of the handwriting expert so that the handwriting expert can make himself available on the said date. On the date on which the handwriting expert is made available, the counsel for petitioner shall proceed with the cross-examination. If he is unable to proceed, either he must make alternative arrangements or he will forfeit the opportunity to cross-examine. The costs of the fresh Warrant of Commission to be issued to the Advocate Commissioner and the costs of the handwriting expert to appear before the Advocate Commissioner shall be borne by the petitioner. The Advocate Commissioner shall ensure that counsel for the petitioner has at least 7 (seven) days' notice of the date of cross-examination of the handwriting expert.

The miscellaneous petitions, if any, pending in these revisions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

09th March, 2018.
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