

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1315 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 13.06.2016 passed in I.A.No.1011 of 2015 in O.S.No.23 of 2011 on the file of the Court of the II Additional District Judge, Karimnagar at Jagtial.

2. In spite of service of notice, the first respondent did not choose to appear and oppose the petition. Hence, this Court is inclined to pass orders on merits.

3. Heard the learned counsel for the petitioner.

4. A perusal of the record reveals that the petitioner filed I.A.No.1011 of 2015 in O.S.No.23 of 2011, under Order XVIII Rule 17 read with Section 151 C.P.C. to recall PW.1 for further cross-examination. The first respondent-plaintiff filed counter *inter alia* contending that the petition is not maintainable under law. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

5. The point that arises for consideration in this revision is:

“Whether there is any illegality, irregularity or impropriety in the order of the trial Court?”

6. A perusal of the record reveals that the first respondent filed O.S.No.23 of 2011 on the file of the Court of the II Additional District Judge, Karimnagar at Jagtial, against the petitioner and other respondents for partition of the suit schedule property. On

20.11.2015 the petitioner's counsel cross-examined PW.1 in the absence of petitioner. On 30.11.2015, the petitioner/defendant No.4 filed the present interlocutory application to recall PW.1 for further cross-examination.

7. At the time of arguments, learned counsel for the petitioner submitted that after completion of the first respondent/plaintiff's side evidence, the matter was posted to defendants' side evidence. The very purpose of the cross-examination of the witness is to elicit the truth. It is the case of the petitioner that for one reason or other, the learned counsel appearing on behalf of the petitioner did not put some relevant questions to PW.1. While deciding the petitions of this nature, the approach of the Court shall be pragmatic and not pedantic. If no opportunity is given to the petitioner, it may not be possible for him to substantiate the stand taken by him. The trial Court, without considering the prejudice likely to be caused to the petitioner, dismissed the petition. Even if one more opportunity is given to the petitioner, no prejudice will be caused to the first respondent/plaintiff.

8. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision on some condition.

9. In the result, the Civil Revision Petition is allowed, setting aside the order dated 13.06.2016 passed in I.A.No.1011 of 2015 in O.S.No.23 of 2011. Consequently, I.A.No.1011 of 2015 in O.S.No.23 of 2011 on the file of the Court of the II Additional District Judge, Karimnagar at Jagtial, is allowed recalling PW.1 for further cross-examination on a condition of the petitioner paying

an amount of Rs.1,500/- (Rupees one thousand and five hundred only) to PW.1. If the petitioner fails to cross-examine PW.1 on the day fixed, the trial Court is at liberty to proceed with the matter in accordance with law. The trial Court is further directed to permit the petitioner to cross-examine PW.1 on payment of the costs mentioned above. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 11.09.2018
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T.SUNIL CHOWDARY, J

