

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3529 of 2018

ORDER:

Heard the learned counsel for petitioners.

2. This Revision has been filed challenging the order dt.13-04-2018 in I.A.No.306 of 2018 in O.S.No.256 of 2007 of the Principal Junior Civil Judge, Srikalahasti.

3. The said suit was filed by petitioners for specific performance of an agreement of sale executed by 1st respondent in favour of 5th petitioner's grand father on 25-05-1971.

4. During the course of trial, the petitioners wanted to examine on Commission one of the attestors of the suit document on the ground that he was aged 82 years, suffering from joint pains, blood pressure, diabetes and unable to move freely.

5. Counter-affidavit was filed by respondents disputing the said contentions and stating that witness is hale and healthy and he is freely moving in Srikalahasti town and he is able to give evidence in Court.

6. By order dt.13-04-2018, the Court below rejected the said application. It perused the medical record and Aadhaar card of the witness and came to the conclusion that though witness is aged 82 years and suffering from blood pressure and diabetes, he is capable of giving evidence in open Court, subject to the condition that the counsel for respondents would cross-examine the witness on the same day.

7. Assailing the same, this Revision is filed.
8. Learned counsel for petitioners contends that though petitioners specifically contended that the witness is unable to move, the Court below erroneously came to the conclusion that witness was capable of giving evidence in Court, and this approach of the Court below cannot be sustained.
9. When there is a specific stand taken by respondents that the witness is hale and healthy and freely moving in Srikalahasti town though he is aged 82 years and suffering from blood pressure and diabetes, it was incumbent on the petitioners to produce a medical certificate or examine the Doctor who treated the witness to prove that the witness was unable to move. But such evidence, the petitioners did not file in the Court below.
10. Therefore I do not find any error of jurisdiction in the order passed by the Court below refusing to permit the petitioners to examine the attesor of the suit document on Commission.
11. The Civil Revision Petition fails and it is accordingly dismissed at the stage of admission. No costs.
12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2018

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