

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3894 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioners – defendants assailing the docket order, 19.04.2018, of the learned Senior Civil Judge, Markapur, passed in IA.No.63 of 2018 in OS.No.169 of 2014, filed under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, requesting to reopen the evidence on the side of the plaintiff and recall PW1 for cross-examination on behalf of the defendants.

I have heard the submissions of Sri P. Nagendra Reddy, learned counsel appearing for the revision petitioners – defendants, and of Sri V. Bhojraju Yadav, learned counsel appearing for the respondent – plaintiff. I have perused the material record.

From the pleadings, submissions and the material on record, the following facts are discernable: - “The sole plaintiff brought the suit for cancellation of registered sale deed and other reliefs. The defendants are resisting the said suit. During the course of trial, when PW1 was present before the Court on two occasions, the defendants failed to cross examine him. The trial Court on one occasion, that is, on 31.10.2017, at the request of the defendants counsel, adjourned the matter to 11.11.2017 after imposing costs of Rs.100/-. That day being a holiday, the matter was posted to 14.11.2017. On 14.11.2017, PW1 was present in the Court at 10:30 AM during call work. He was not cross-examined even till after lunch hour despite the learned counsel

for the defendants seeking a pass-over for cross-examination of the said witness. Eventually, though the 2nd defendant is present in Court, as the counsel was absent, the right of the defendants to cross-examine PW1 was forfeited, for the reason that PW1 was aged 78 years and waited in the Court hall from 10:30 AM to 03:00 PM on that day. Later, the defendants filed the instant Application for reopening the evidence and recalling the said witness for cross-examination. The said Application was resisted by the plaintiff by filing a counter, *inter alia*, stating that the witness (PW1) is a senior citizen aged about 80 years and that he is not in a position to repeatedly attend the Court and that the defendants did not avail two reasonable opportunities afforded to them to cross-examine him and, therefore, they are not entitled to recall him. The trial Court dismissed the Application. Therefore, the defendants are before this Court.'

Learned counsel for the revision petitioners – defendants submits that only on two occasions, the defendants failed to cross-examine the witness – PW1 and that on the day the right to cross-examine PW1 was forfeited, the 2nd defendant was very much present in Court; but, his counsel could not make it convenient to cross-examine PW1; and, that for the fault of the counsel, the defendants need not be penalized. He would further submit that they are prepared to cross examine PW1 on any date which the trial Court may fix.

Learned counsel for the plaintiff, while supporting the orders impugned of the trial Court, strongly opposed for granting the relief to the revision petitioners – defendants. He further submitted that the defendants, who are not diligent in prosecuting their defence, are not entitled to the relief.

I have given earnest consideration to the facts narrated and submissions of both the sides.

Having regard to the submissions and considering the nature of the suit & the relief claimed and the further fact that the matter is still before the trial Court and the recording of evidence of PW2 is in progress, this Court is of the considered view that one more opportunity can be given to the defendants to cross-examine PW1 subject to certain terms.

On the above analysis, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, IA.No.63 of 2018 in OS.No.169 of 2014 is allowed and PW1 is recalled for cross-examination by the defendants 1 & 2 subject to the condition that the defendants shall pay costs of Rs.5,000/- [Rupees Five Thousands only] to PW1, on the day he appears for facing cross-examination before the trial Court. Considering the fact that PW1 is a senior citizen, the trial Court shall fix a date convenient to it and the parties to the *lis* within one week from the date of receipt of a copy of this order and proceed to record cross-examination of PW1. It is made clear that the defendants shall cross-examine PW1 on the date fixed by the trial Court, without fail.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

03.08.2018

Vjl

M.SEETHARAMA MURTI, J