

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.3039 of 2017

ORDER:

Heard Mr.Malugari Sudarshan, learned counsel for petitioner and Mr.V.V.Ramana Rao, learned counsel for respondent.

The plaintiff in O.S.No.19 of 2012 in the Court of Senior civil Judge, Siricilla is the revision petitioner. The revision petitioner filed the suit for the following reliefs:

- i) A decree for declaration of title that the plaintiff is the owner of the house No.3-1-111 with open land totally measuring 285 sq.yards pertaining to plot no.10 in Sy.No.1578, situated at Shanthinagar, Siricilla town, which is more specifically shown in the schedule and sketch map annexed hereto.
- ii) A decree for recovery of possession of the above said suit schedule property from the defendant and direct the defendant to deliver the vacant possession of the same to the plaintiff;
- iii) A decree for cancellation of decree passed in O.S.No.1341 of 1992 dt.29th day of September, 1992 on the file of the District Munsiff (Junior Civil Judge) at Sircilla.
- iv) Costs of the suit be awarded; Or
Any other relief for which plaintiff is otherwise entitled to."

It is the matter of record that the respondent herein, on 19.07.2012 was set exparte. The evidence of revision petitioner was completed in the year 2013. On 07.10.2014, the respondent as D.W1 filed chief affidavit. From 07.10.2014 till 23.02.2017, the learned trial Judge, it appears accepted every request of

respondent for adjournment and provided sufficient opportunity to adduce evidence or D.W1 remains present for cross examination. The patience is when completely worn out, the learned trial Judge on 23.02.2017 eschewed the evidence of D.W1, closed the trial and posted the suit for arguments.

The wife of respondent who is prosecuting in her capacity as power of agent of respondent filed I.A.No.68 of 2017 to reopen the suit for trial and also set aside the order dated 23.02.2017. The said application was stoutly opposed by the revision petitioner, alibit unsuccessfully. The learned trial Judge, through the order impugned in the civil revision petition accepted the prayer in I.A.No.68 of 2017. Hence, the civil revision petition.

The petitioner challenges the order impugned in the civil revision petition by contending that the case on hand does not merit consideration for extending the discretion in favour of respondent who is both callous and complacent in conducting the trial. Keeping in view the nature of relief prayed in the plaint, Mr.Sudarshan contends that it, but for natural that the respondent herein tries to drag on the litigation for as long as possible. The petitioner further contends that the affidavit filed by the wife of respondent herein is not preceded by an order of trial under rule 32 of civil rules of practice and therefore, the order is liable to be set aside and civil revision petition allowed.

Mr.Ramana Rao takes up the last statement and clarifies the factual position that the deponent of affidavit in I.A.No.68 of 2017 is the wife of respondent and an application was filed under Rule

32 of civil rules of practice and the said application was allowed. Therefore, the deponent is competent to file the affidavit. On the contention of petitioner that the respondent is both callous and complacent in conducting the trial, Mr. Ramana Rao submits that the respondent to eke out livelihood works in Saudi Arabia and the fact that he is away from the country is acknowledged by the court also, while ordering rule 32 petition. He finally submits that while the trial court exercised its discretion to afford an opportunity to adduce the evidence by the respondents, this Court in its jurisdiction and discretion ought not to substitute the reasons and allow the civil revision petition. On the procrastination of litigation in this fashion, he submits for stipulating reasonable time for completion of trial and that respondent will also cooperate.

Learned counsel since have made elaborate submissions, this Court is constrained to advert to these submissions to the required extent. But having regard to the order impugned in the civil revision petition and also the circumstances explained by the trial court for exercising discretion, this Court is of the view that all the contentions need not be specifically adverted to, much less a finding recorded. Suffice to state that the learned trial Judge, to meet the ends of justice has taken a lenient view on the conduct of respondent and thereafter exercised the discretion both for reopening and adducing the further evidence. Since that being the case, this Court ought not to set up the discretion by referring to contentions urged by the revision petitioner.

The learned trial Judge considers and disposes of O.S.No.19 of 2012 as expeditiously as possible preferably within two months from the date of receipt of copy of this order. The petitioner is given liberty to place the copy of this order before the trial Court by way of a memo and seek expeditious disposal. The statement made on behalf of parties to cooperate with the trial Court for timely completion of the suit is placed on record. A party acting contrary to the statement made before the Court or does not cooperate, the trial Court is given liberty to pass appropriate order and proceed in accordance with law.

The civil revision petition fails and accordingly dismissed.
No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 30.08.2018
dv

S. V. BHATT, J



