

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4807 OF 2016

ORDER:

1 This petition is filed under Article 227 of the Constitution of India assailing the order dated 09.09.2016 passed in I.A.No.718 of 2016 in I.A.No.717 of 2016 in O.S.No.1086 of 2012 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District.

2 Heard the learned counsel for both parties.

3 A perusal of the record reveals that the husband of the first respondent filed O.S.No.1086 of 2012 against the petitioner and Krishi Co-operative Housing Society Limited, Vijayapuri Colony, SRK Puram, Hyderabad for declaration and perpetual injunction in respect of the suit schedule property. During the pendency of the suit, the husband of the first respondent died and the first respondent came on record as plaintiff No.2. During the pendency of the suit, the second respondent sold the suit schedule property in favour of the third respondent under a registered sale deed dated 06.07.2015. While things stood thus, the first respondent filed I.A.No.717 of 2016 under Order VI Rule 17 CPC seeking permission of the Court to amend the plaint. The petitioner filed I.A.No.718 of 2016 to permit her to cross examine the first respondent. The trial court dismissed the said petition. Hence the present Civil Revision Petition.

4 Today this Court allowed Civil Revision Petition No.6168 of 2016 remanding the matter to the trial court for fresh disposal. As rightly pointed out by the learned counsel for the petitioner there is no recital in the affidavit filed in I.A.No.717 of 2016 about the particulars with regard to the dispossession of the second respondent from the suit schedule property by the petitioner. The apprehension

of the petitioner is that the second respondent may not come into the witness box at the time of full fledged trial for the reasons best known to her. As rightly pointed out by the learned counsel for the petitioner, in view of the ambiguity in the affidavit filed in I.A.No.717 of 2016, it is invariable to permit the petitioner to cross examine the second respondent in order to ascertain certain relevant facts, which will throw light on the controversy involved in the suit. The trial court without considering the material available on record, dismissed the petition. If the order passed by the trial court is allowed to stand, it would certainly amount to miscarriage of justice. Therefore, it is a fit case to allow this Civil Revision Petition.

5 Having regard to the facts and circumstances of the case, this Civil Revision Petition is allowed, setting aside the order dated 09.09.2016 passed in I.A.No.718 of 2016 in I.A.No.717 of 2016 in O.S.No.1086 of 2012 and I.A.No.718 of 2016 is allowed, permitting the petitioner to cross examine the second respondent in I.A.No.717 of 2016. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: August 2, 2018.

Kvsn