

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4193 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 28.07.2017 passed in I.A.No.196 of 2017 in O.S.No.204 of 2008 on the file of the Court of the Additional Senior Civil Judge, Machilipatnam.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision petition are briefly as follows: The first respondent herein filed O.S.No.204 of 2008 on the file of the Court of the Additional Senior Civil Judge, Machilipatnam, against the petitioner and respondent Nos.3 to 7 herein for partition of the suit schedule property. After filing the chief examination affidavit of PW.1, the matter was posted for cross-examination of PW.1. For one reason or other, the defendants did not choose to cross-examine PW.1. The trial Court having no other alternative, forfeited the right of the defendants to cross-examine PW.1. The petitioner herein filed I.A.No.196 of 2017 in O.S.No.204 of 2008, under Order XVIII Rule 17 read with Section 151 of C.P.C. to recall PW.1 for the purpose of cross-examination. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision petition.

4. A perusal of the record reveals that the petitioner and respondents are same family members. The first respondent filed the suit for partition of the suit schedule property. The very purpose of cross-examination of the witness is to elicit the truth. If

no opportunity is given to the petitioner to cross-examine PW.1, it may not be possible for him to establish his defence taken in the written statement. While passing the orders in interlocutory applications of this nature, the Court has to strike balance between the parties. Even if the petition is allowed, the same may not cause any prejudice to the first respondent. The trial Court, without considering the nature of the suit and *inter se* relationship between the parties, dismissed the petition on technicalities. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. If this Court allowed the petition unconditionally, the possibility of dragging on the matter by the petitioner cannot be ruled out completely. Except the petitioner, the other defendants have not chosen to challenge the order of the trial Court. Hence, the order passed by the trial Court became final so far as the other defendants are concerned. Hence, this Court is of the considered view that it is a fit case to allow the revision petition.

5. In the result, the Civil Revision Petition is allowed setting aside the order dated 28.07.2017 passed in I.A.No.196 of 2017 in O.S.No.204 of 2008 on the file of the Court of the Additional Senior Civil Judge, Machilipatnam. Consequently, I.A.No.196 of 2017 is allowed recalling PW.1. The petitioner/defendant No.2 alone is entitled to cross-examine PW.1. Taking into consideration the age of the parties, the trial Court is hereby directed to dispose of the matter, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 12.06.2018
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