

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3580 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 03.07.2017 passed in I.A.No.338 of 2016 in O.S.No.31 of 2013 on the file of the Court of the Senior Civil Judge at Siricilla.

2. Heard the learned counsel for the petitioner and learned counsel for the third respondent.

3. In spite of service of notice, respondent Nos.1 and 2 did not choose to appear. Hence, this Court is inclined to dispose of the revision petition on merits in the absence of respondent Nos.1 and 2.

4. The facts leading to filing of the present revision petition are briefly as follows: The petitioner filed O.S.No.31 of 2013 on the file of the Court of the Senior Civil Judge, Siricilla, against the respondents seeking declaration and perpetual injunction in respect of the suit schedule property. After closure of the defendants' side evidence, the petitioner filed I.A.No.338 of 2016 in O.S.No.31 of 2013 to recall DW.1 for cross-examination of DW.1. The trial Court, basing on the material available on record, arrived at a conclusion that there are no merits in the petition and consequently, dismissed the petition. Hence, the revision.

5. Now the point that arises for consideration is:

Whether there is any illegality or irregularity in the order passed by the trial Court?

6. A perusal of the record reveals that for one reason or other, the counsel appearing on behalf of the petitioner did not cross-examine DW.1. The very purpose of the cross-examination of the witness is to elicit the truth. If no opportunity is given to the petitioner to cross-examine DW.1, it may not be possible for him to elicit some relevant facts in the cross-examination of DW.1. While passing the orders in interlocutory applications of this nature, the Court has to strike balance between the parties. Even if DW.1 is recalled, no prejudice would be caused to DW.1. On 28.07.2017, while granting stay, this Court directed the petitioner to take Demand Draft for Rs.5,000/- in favour of DW.1.

7. At the time of arguments, learned counsel for the petitioner submitted that as directed by this Court on 28.07.2017, the petitioner has taken the Demand Draft for Rs.5,000/- in the name of DW.1. He further submitted that the trial Court posted the matter to 12.06.2018.

8. Taking into consideration the facts and circumstances of the case, this Court is of considered view that it is a fit case to allow I.A.No.338 of 2016 in O.S.No.31 of 2013.

9. In the result, the Civil Revision Petition is allowed setting aside the order dated 03.07.2017 passed in I.A.No.338 of 2016 in O.S.No.31 of 2013 on the file of the Court of the Senior Civil Judge at Siricilla. Consequently, I.A.No.338 of 2016 is allowed recalling DW.1. The petitioner is hereby directed to complete the cross-examination of DW.1 on or before 10.07.2018. If the petitioner fails to cross-examine DW.1 within the time stipulated above, the

trial Court is at liberty to proceed further in accordance with law.

There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 08.06.2018

Note: Issue CC by 14.06.2018
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