

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.6037 of 2018

ORDER:

Heard Sri K.M.Mahender Reddy, learned counsel for the petitioner/plaintiff and Sri N.C.Pavan Kumar, learned counsel for Respondents/defendants and according to him, he filed caveat.

2. This Revision filed under Article 227 of the Constitution of India, challenges the order dated 20.8.2018 passed by the VI Additional District Judge, Godavarikhani in I.A.No.370 of 2018 in O.S.No.17 of 2012. By way of the impugned order, the learned District Judge allowed I.A.No.370 of 2018 filed by the Respondents herein under the provisions of Order 18 Rule 17 read with Section 151 of CPC seeking to recall P.W.1 for further cross-examination.

3. The petitioner herein instituted O.S.No.17 of 2012 for partition. In the said suit, after conclusion of evidence on the ground that certain differences cropped between the defendants and their erstwhile counsel, which resulted in ineffective cross-examination, the present application came to be filed. The learned Judge allowed the said application on the ground of non-filing of counter by the plaintiff and absence of any representation on her behalf.

4. According to the learned counsel for the petitioner, the impugned order is highly erroneous and contrary to law and is opposed to the very spirit and object of Order 18 Rule 17 of CPC. It is further contended by the learned counsel that the impugned order is a non-speaking order and there is no discussion with regard to sustainability of the averments in I.A.No.370 of 2018. It is also the submission of the learned counsel that on 13.8.2018, the petitioner filed a detailed counter vide C.F.No.1248 of 2018, but the learned

Judge did not take the said counter into consideration and erroneously recorded that no counter is filed.

5. Per contra, it is contended by the learned counsel for the Respondents/defendants that there is no illegality nor there exists any legal infirmity in the impugned order and in the absence of the same, the questioned order is not amenable to any judicial review under Article 226 of the Constitution of India.

6. A perusal of the impugned order makes it clear that the said order is a non-speaking order and it is rightly contended by the learned counsel for the petitioner that the order does not refer to any of the averments in the affidavit filed in I.A.No.370 of 2018 and sustainability of the same. It is also required to be noted that the learned Judge did not assign any reasons to allow the application. On this ground alone, the impugned order cannot be sustained in the eye of law.

6. For the aforesaid reasons, the C.R.P. is allowed, setting aside the order dated 20.8.2018 passed by the VI Additional District Judge, Godavarikhani in I.A.No.370 of 2018 in O.S.No.17 of 2012 and the matter is remitted back to the said Court for fresh consideration and for passing orders strictly in accordance with law. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 23.10.2018
DA



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.R.P.No.6037 of 2018

23.10.2018

DA