

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

C.R.P.No.6192 of 2018

ORDER:

Defendant in O.S.No.159 of 2012 on the file of the Court of Principal Junior Civil Judge, Godavarikhani is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. This revision calls in question the order passed by the said Court in I.A.No.73 of 2018 in O.S.No.159 of 2012 dated 17.8.2018. The respondents herein instituted the said suit for relief of perpetual injunction to restrain the defendant/petitioner herein and his men and family members from interfering with the possession and enjoyment over the said property. When the said suit stood posted for arguments, the defendant/petitioner herein filed the present application under Section 151 of Code of Civil Procedure, praying the Court below to reopen the case for the purpose of recalling D.W.1 and for producing the encumbrance certificate, certified copy of the registered sale deed and certified copy of the plaint in O.S.No.181 of 2012. The said application was resisted by the plaintiffs/respondents herein by way of filing counter. The learned Principal Junior Civil Judge by way of order under challenge, dismissed the said application i.e. I.A.No.73 of 2018. Hence, the present revision.

3. According to the learned counsel for the petitioner, the questioned order is highly erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 8 Rule 1-A of CPC. In elaboration, it is further submitted by the learned counsel that the learned Judge failed to take into consideration the contents of the affidavit filed in support of the application and had the same been done, the order impugned would not have

emanated. It is further contended by the learned counsel that in the event of allowing the application filed by the petitioner herein, no prejudice would be caused to the respondents herein and on the other hand, the same would be helpful for arriving at a just conclusion.

4. The material available on record reveals that when the suit stood posted for arguments after conclusion of the evidence, the present application came to be filed. In the affidavit filed in support of the present application, the petitioner herein stated that he traced out certain important documents and marking of the same would be essential for his case, which necessitates reopening of evidence. In this context, it may be appropriate to refer to the provisions of Order 8 Rule 1A of CPC, which came to be inserted by way of Act 46/99 with effect from 1.7.2002. According to clause (1) of Rule 1A of Order 8, it is mandatory on the part of the defendant to produce the documents in support of his case along with written statement. It is also an obligation on the part of the defendant, according to clause 2 of the said rule that if any such document is not in possession or power of the defendant, he has to state in whose possession or power it is. Clause 3 of the said rule is a slight departure to Rule 1A and according to the said rule production of documents, if any, posterior to filing of writ petition can be done with the leave of the Court. In the instant case, except stating that he traced out some important documents which would be helpful for his case, the petitioner herein did not state anything about failure to file the said documents along with written statement.

5. A perusal of the order impugned in clear and vivid terms discloses that a number of opportunities were given to the petitioner herein to adduce

evidence and eventually the learned Judge while assigning cogent and convincing reasons, dismissed the application filed by the petitioner herein.

6. It is a settled and well established principle of law that unless the order impugned suffers from perversity and lack of jurisdiction, no revision under Article 227 of the Constitution of India is permissible. In the instant case, this Court does not find any such contingency in the impugned order.

7. For the aforesaid reasons, the C.R.P. is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 2.11.2018
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A.V.SESHA SAI, J



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2.11.2018

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