

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.NO.5523 OF 2017

ORDER :

Heard counsel for petitioner and Sri B.Prudvi Kumar, Counsel appearing for respondents 2 to 5. Though notice was served on the 1st respondent, none appears for 1st respondent.

2. Petitioner has filed this Revision challenging the order dt.07.07.2017 in I.A.No.337 of 2017 in O.S.No.344 of 2012 of the II Additional Junior Civil Judge, Chittoor.

3. Petitioner is 2nd defendant in the suit. The said suit was filed for declaration of right, title and interest of the 1st respondent/plaintiff over the subject property and for perpetual injunction.

4. Petitioner engaged a counsel and filed written statement.

5. The 1st defendant died and respondents 2 to 5 are his legal heirs.

6. During the course of trial, after the evidence of plaintiff was completed, the Court only granted opportunity to 1st defendant's LRs to lead evidence, and then closed defendants' evidence without giving opportunity to the petitioner/2nd defendant to lead evidence and posted the case for hearing of arguments on 30.06.2017.

7. This prompted the petitioner/2nd defendant to file I.A.No.337 of 2017 to reopen the case to enable him to adduce evidence.

8. It is stated in the affidavit filed in support of the said application that case had been posted to 28.06.2017 for further evidence of 1st defendant. On that day, 1st defendant counsel represented that he had no further evidence to lead and the Court then closed the evidence of defendants and posted the matter for arguments on 30.06.2017 without giving opportunity to the petitioner/2nd defendant to lead evidence.

9. No counter was filed to this application by the plaintiff/1st respondent.

10. On 07.07.2017 the Court below dismissed the said application on the ground that petitioner did not come forward to adduce evidence and that ample opportunity had been given to the defendants to lead evidence.

11. Aggrieved by the said order, this Revision is filed.

12. It is not stated by the Court below that the matter was posted for adducing of evidence by the 2nd defendant at any point of time. It is the duty of the Court to post the matter for the said step after the evidence of the 1st defendant or his LRs is concluded. Without doing so, the Court cannot blame the petitioner for not coming forward to adduce evidence.

13. Thus, the impugned order has caused grave prejudice to the petitioner in as much as the petitioner had been deprived of an opportunity to lead evidence, though he had a right to lead evidence independently.

14. Therefore, this Civil Revision Petition is allowed; the impugned order is set aside; and the Court below is directed to post the suit for adducing of evidence by the petitioner and after the petitioner adduces evidence, it can proceed further in the matter. No costs.

15. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

22nd January, 2018.

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