

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.6577 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 30.10.2017 passed in I.A.No.881 of 2017 in O.S.No.87 of 2011 on the file of II Additional District Court, Visakhapatnam.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

4. A perusal of the record reveals that the first respondent filed O.S.No.87 of 2011 on the file of II Additional District Court, Visakhapatnam, against the petitioner and respondents 2 to 5 for declaration to declare the registered sale deed dated 20.10.2010 as invalid and void and for consequential perpetual injunction. During pendency of the suit, the trial Court appointed an advocate commissioner to examine the first respondent. The advocate commissioner and the counsel appearing on behalf of both the parties visited the house of the first respondent on 04.09.2017 for the purpose of cross-examination. The advocate commissioner returned the warrant on the ground that the first respondent is incapable of facing the cross-examination due to her mental condition. Thereafter, the son of the first respondent filed I.A.No.881 of 2017 under Order XXXII Rule 3 CPC to permit him to

prosecute the case on behalf of his mother as next friend. The petitioner filed a counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

5. Learned counsel for the petitioner strenuously submitted that the trial Court allowed the petition without following the procedure as contemplated under Order XXXII Rule 15 CPC.

6. In order to appreciate the rival contentions, this Court carefully perused the impugned order. The trial Court allowed the petition basing on the opinion expressed by the advocate commissioner. It is needless to say an advocate commissioner is not the competent person to speak about the mental condition of a person. As rightly pointed out by the learned counsel for the petitioner, the respondent has not produced single scrap of paper to substantiate his stand. Without medical certificate, it may not be possible for the Court to arrive at a conclusion with regard to the intellectual faculty of P.W.1. The trial Court instead of allowing the petition basing on the opinion expressed by the advocate commissioner ought to have followed the procedure as contemplated under Order XXXII Rule 15 CPC. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to remand the matter to the trial Court for fresh disposal.

7. In the result, the Civil Revision Petition is allowed setting aside the order dated 30.10.2017 passed in I.A.No.881 of 2017 in O.S.No.87 of 2011 and remanded to the trial Court. The learned II Additional District Judge, Visakhapatnam, is hereby directed to dispose of I.A.No.881 of 2017 in O.S.No.87 of 2011, after affording a reasonable opportunity to both the parties, in accordance with law. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:13.12.2018

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