

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 790 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India, challenging the order dated 28.02.2019 in IA.No.39 of 2019 in OS.No.96 of 2017 of the Additional Senior Civil Judge, Karimnagar.

2. Petitioners are the defendants in the suit filed by respondents 1 to 3 against them for partition of plaint schedule property and seeking a share therein apart from delivery of the possession of the said share.

3. After the evidence on the side of both parties was closed on 17.07.2018 and the matter was posted for arguments, on 03.01.2019 petitioners filed IA.No.39 of 2019 under Section 151 CPC to reopen the evidence stating that they could not examine other witnesses in whose presence and with whose consent a Will Deed was executed by the father of the 2nd petitioner; that the said witnesses were none other than the daughters of the 1st respondent; that they were not available at that time, but now they are ready to give evidence.

4. Though no counter affidavit was filed by the respondents they opposed the same stating that the application was filed only to fill up the lacunas and drag on the case.

5. By order dated 28.02.2019, the Court below dismissed the said IA stating that the evidence on the side of petitioners had been closed on 17.07.2018 itself and after long delay, the present application has been filed stating that they intended to examine defendants 6 and 7.

6. Challenging the same present revision is filed.

7. Counsel for the petitioners contended that dismissal of the IA.No.39/2019 by the Court below has caused great prejudice to the petitioners and the Court below ought to have re-opened the suit and permitted D6 and D7 to give evidence.

8. Admittedly the matter has been posted for arguments after closing of the petitioners' evidence on 17.07.2018. Dragging on the matter till January, 2019 this application has been filed to reopen the suit for further evidence. When the opportunity was given to the petitioners, they ought to have examined the witnesses, whom they proposed to now examine, and they cannot demand an opportunity whenever they feel to examine them, particularly when the case is posted for arguments, after more than seven months, now.

9. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India.

10. Accordingly, the Civil Revision Case is dismissed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

18th April, 2019
tk.