

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1125 of 2019

ORDER :

This Civil Revision Petition is filed assailing the order dt.10-12-2018 in I.A.No.739 of 2018 in O.S.No.18 of 2012 of the II Additional District Judge, Nalgonda at Suryapet.

2. Petitioners are defendants in the said suit, which had been filed by respondent Nos.1 and 2 for partition of the plaint schedule properties, mesne profits and costs.

3. Written statement was filed by petitioners herein opposing the suit claim on 05-02-2013.

4. After trial started and the evidence on the side of plaintiffs/respondent Nos.1 and 2 was closed, the turn of the petitioners to lead evidence came, but they did not appear before the Court below and their evidence was closed.

5. Then they filed I.A.No.1242 of 2017 to be given an opportunity to lead evidence. On 14-06-2018, the said application was allowed with a specific direction that they should positively lead evidence on or before 26-06-2018 observing that if they do not do so, the application would stand dismissed. On 26-06-2018, petitioners did not appear and adduce evidence and there was also no representation

made though the Court below kept the matter aside till 4.15 p.m. So it dismissed the application.

6. Petitioners thereafter filed I.A.No.739 of 2018 on 19-09-2018 blaming the Court below for closing their evidence and posting the matter for the evidence other defendants contending that they were not given opportunity to lead evidence and praying the Court to reopen the matter again by permitting them to lead evidence.

7. Counter-affidavit was filed by respondent Nos.1 and 2 stating that though sufficient time had been granted to the petitioners to lead evidence from October, 2017, they did not avail the said opportunity; that I.A.No.1242 of 2017 filed by petitioners for reopening their evidence was allowed and opportunity was again given to the petitioners to lead evidence by appearing on 26-06-2018, but they did not do so and so they should not be given any further opportunities to lead evidence.

8. By order dt.10-12-2018, the Court below dismissed I.A.No.739 of 2018. The Court below observed that it had allowed I.A.No.1242 of 2017 on 14-06-2018 when the petitioners pleaded that 1st petitioner was not well, with a condition that if petitioners fail to adduce evidence on or before 26-06-2018, the petition would be closed, and on 26-06-018 petitioners were absent and so it was dismissed.

9. Assailing the same, this Revision was filed.

10. Heard learned counsel for petitioners and the learned counsel for respondents.

11. Learned counsel for petitioners contends that 1st petitioner is 80 years old and 2nd petitioner is 60 years old and they were not able to attend the Court below on 16-06-2018.

12. Merely because the petitioners are Senior Citizens, no inference can be drawn that they had some physical and mental incapacity to attend the Court below and lead evidence. When I.A.No.1242 of 2017 filed by petitioners was allowed by the Court below and a conditional order was passed asking them to adduce evidence on or before 26-06-2018 and petitioner did not appear on that day before the Court below, the Court below is left with option but to close their evidence. Petitioners cannot take advantage of their own wrong and blame the Court below for denying them opportunity to lead evidence.

13. I therefore do not find any merit in the Revision and it is accordingly dismissed at the admission stage. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-06-2019

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