

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1834 OF 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.09.07.2019 in I.A.No.492 of 2019 in O.S.No.231 of 2010 of III-Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. The petitioners are plaintiffs in the said suit, which they have filed against the respondents for partition of the plaint schedule property and for delivery of shares therein to them.

3. After the trial concluded and the matter was posted for arguments, the 8th defendant/1st respondent herein filed I.A.No.492 of 2019 to reopen the defendants' evidence so that she can examine herself as D.W.9.

4. She pleaded that she was suffering from age related illnesses, that she was more than 80 years old and had been physically immobile. She also stated that she was staying with her eldest son, who was first defendant in the suit, and that the first defendant was taking care of her treatment and asked her other sons not to disturb her health condition. She alleged that she had valid reason for not appearing when the matter was posted for defendants' evidence. Therefore, the application should be allowed.

5. Counter affidavit was filed for the petitioners opposing the said application. They contended that the 1st respondent was hale and hearty

and some old medical certificates have been produced to mislead the trial Court. They also pointed out that no attempts were made by her when the evidence was going on and the matter had been reopened on several occasions. They alleged that filing of this application by first defendant is only to protract the matter further by delaying the disposal of the suit.

6. By order dt.09.07.2019, the Court below allowed the said application stating that to determine the real dispute between the parties, opportunity should be given to the 1st respondent to lead evidence.

7. Assailing the same, this Revision is filed.

8. Counsel for the petitioners contended that the order passed by the Court below cannot be sustained since the 1st respondent, when the defence evidence was led, never informed the Court below about her illness and nothing prevented her from getting her evidence recorded through an Advocate-Commissioner. He also contended that there is nothing to show that she was ill at that time when her turn to lead evidence came.

9. Counsel for the 1st respondent refuted the said contentions and supported the order passed by the Court below and relied upon the medical certificates filed by her in the Court below, which have been filed in this Revision too.

10. Though there is some material contained in these documents about left ventricular dysfunction, it is not apparent that the 1st respondent had been immobile all the time during the pendency of the suit from 2010 to

2019. Since she was admittedly staying with her eldest son, who was first defendant in the suit, she ought to have communicated through the first defendant any difficulty in leading the evidence or got appointed an Advocate-Commissioner to record her evidence. Having kept silent all the time for nine years, she cannot suddenly plead about her alleged illness and seek to reopen the suit which has been posted for hearing of arguments. Unfortunately, the Court below did not take note of these aspects and allowed I.A.No.492 of 2019.

11. Accordingly, the Revision is allowed; order dt.09.07.2019 in I.A.No.492 of 2019 in O.S.No.231 of 2010 of III-Additional District Judge, Ranga Reddy District at L.B.Nagar, is set aside and the said IA is dismissed. There shall be no order as to costs.

12. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 05.08.2019

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