

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2541 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed aggrieved by the order, dated 14.10.2019, passed in I.A.No.362 of 2019 in O.S.No.194 of 2011 by the III Senior Civil Judge, City Civil Court, Secunderabad, wherein, the petition filed under Section 151 of the Code of Civil Procedure, 1908, seeking to reopen the main suit in O.S.No.194 of 2011 for the purpose of adducing evidence by defendant, was dismissed.

2. Heard the learned counsel for the petitioner, learned counsel for the 1st respondent and perused the record.

3. Learned counsel for the petitioner/defendant would submit that the suit in O.S.No.194 of 2011 is filed for declaration of title and perpetual injunction and the revision petitioner has substantial oral and documentary evidence to rebut the claim of the 1st respondent/plaintiff. He further submitted that due to ill-health, the petitioner could not appear before the Court below and there is no other reason for his absence and ultimately, prayed to set aside the impugned order and allow I.A.No.362 of 2019 as prayed for.

4. On the other hand, learned counsel for the 1st respondent opposed the relief sought for by the revision petitioner and supported the impugned order passed by the Court below.

5. In view of the submissions made by both sides, the point for determination is:

“Whether the impugned order, dated 14.10.2019, passed in I.A.No.362 of 2019 in O.S.No.194 of 2011 by the III Senior Civil Judge, City Civil Court, Secunderabad, is liable to be set aside?”

6. POINT:

The subject suit in O.S.No.194 of 2011 is filed for declaration of title and perpetual injunction. Due to ill-health the petitioner/defendant could not appear before the Court below, as such the Court below closed his evidence. The affidavit filed in support of the subject IA, reveals that due to ill-health, the petitioner could not appear before the Court below and proceed with the trial of the suit. Non-filing of medical certificate is not fatal to the case of the revision petitioner/defendant. The relief of declaration of title and perpetual injunction is required to be adjudicated after full-fledged trial, after adducing evidence of both parties. Hence, the impugned order is liable to be set aside.

7. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 14.10.2019, passed in I.A.No.362 of 2019 in O.S.No.194 of 2011 by the III Senior Civil Judge, City Civil Court, Secunderabad. Consequently, I.A.No.362 of 2019 stands allowed as prayed for. Since the subject suit is of the year 2011, both parties have conceded that they will expeditiously proceed with the trial of the case. Acceding to the request of the both

parties, the Court below is directed to dispose of O.S.No.194 of 2011 within a period of three (3) months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

15th November, 2019
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THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



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Date:15.11.2019

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