

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.5488 of 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11.08.2015 in I.A.No.1894 of 2014 in O.S.No.169 of 2006 passed by the Chief Judge, City Civil Court, Hyderabad.

The petitioner herein is the plaintiff in the said suit, which was filed for declaration of title and for perpetual injunction.

Respondent Nos.1 and 2 herein are defendants therein and they filed separate written statements in the suit opposing grant of relief to the petitioner.

After the trial started and evidence on the side of the petitioner was closed, the respondents commenced their evidence and the matter was posted for cross-examination of DW.1.

At that stage, interim order was passed by this Court in CRP.No.5266 of 2011 staying the proceedings in the said suit and the said Civil Revision Petition arose out of another interlocutory order passed in the said suit. The said stay was ultimately vacated.

After vacating of the stay order in the said CRP, respondent No.1/Defendant No.2 filed I.A.No.1894 of 2014 to recall DW.1 for the purpose of cross-examination by him

contending that he is also entitled to cross-examine DW.1 after completion of cross-examination by the petitioner.

Though the said application was opposed by the petitioner, the Court below allowed the same on the ground that no prejudice would be caused to the petitioner/plaintiff.

Assailing the said order dt.11.08.2015, this Revision is filed.

Heard Sri Vedula Srinivas, learned counsel for the petitioner and Sri Poluri Bhaskar, learned counsel for respondent No.1. None appears for respondent No.2, although notice has been served to him.

Learned counsel for the petitioner contended that when there is no conflict between the stands taken by defendant Nos.1 and 2 in their respective written statements, defendant No.2 cannot be permitted to cross-examine DW.1, who is defendant No.1/respondent No.2. In support of his contention, learned counsel also cited a decision of Karnataka High Court in MOHAMED ZIAULLA v. SORGRA BEGUM¹ and also a decision of Rajasthan High Court in SOHANLAL AND OTHERS v. GULAB CHAND². In both these decisions, it was held that Sections 137 and 138 of the Evidence Act do not specifically refer to the cross-examination of co-defendant's witnesses and unless there is a conflict *inter se* between the defendants, one defendant cannot be treated as an adversary

¹ 1997 AIHC 2628

² AIR 1966 RAJASTHAN 229

of the other defendant and permitted to cross-examine the latter.

This legal position is not disputed by the learned counsel for respondent No.1.

The Court below does not seem to have noticed this principle of law when it allowed I.A.No.1894 of 2014 in O.S.No.169 of 2006.

Therefore, this Civil Revision Petition is allowed; order dt.11.08.2015 in I.A.No.1894 of 2014 in O.S.No.169 of 2006 passed by the Chief Judge, City Civil Court, Hyderabad, is set aside; and the said I.A.No.1894 of 2014 is dismissed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

29.03.2019.
Msr

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