

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.4611 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioner/defendant No.2, challenging the order, dated 18.03.2010, passed in Memo (SR) No.397 of 2010 in O.S.No.5 of 2017 by the Principal District Judge, Warangal, whereby, the Court below allowed the memo filed by the respondent No.1 herein/plaintiff, seeking to direct the defendants to lead their evidence at first.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the revision petitioner/defendant No.2 would contend that since the respondent No.1 herein/plaintiff admits in his pleadings that there was prior partition but the same was not acted upon, the Court below ought to have directed the respondent No.1/plaintiff to lead evidence first as the burden lies on him to prove the case and ultimately prayed to set aside the impugned order by allowing the civil revision petition.

4. On the other hand, learned counsel for the respondent No.1/plaintiff would contend that since the revision petitioner/defendant No.2 claims that the suit schedule properties were already partitioned, the burden lies on the defendants to lead

evidence at the first instance. Therefore, the Court below justified in passing the impugned order and ultimately prayed to dismiss the Civil Revision Petition.

5. The material placed on record reveals that the revision petitioner/defendant No.2 claims that the suit schedule properties were already partitioned by metes and bounds. Under these circumstances, certainly, the burden lies on the person who claims that there was prior partition. Therefore, the Court below is justified in directing the defendants to lead evidence at first. There is no legal infirmity in the impugned order passed by the Court below. The Civil Revision Petition is devoid of merits and is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending, shall stand closed.

05th February, 2020
vvr

Dr. SHAMEEM AKTHER, J