A.No.2387 of 2023 in
C.S.No.174 of 2015

R.N.MANJULA,J.

This application has been filed to eschew the evidence of P.W.1 and permit the 2nd applicant to depose in the suit on behalf of the plaintiffs.

2. The learned counsel for the plaintiffs submitted that P.W.1 who is the 1st plaintiff had undergone knee surgery and she finds it very difficult to come to Court and make herself available to depose evidence in the case.

3. The records would show that the matter has been adjourned for so many hearings for the further chief of P.W.1. Since the 1st applicant who is the P.W.1 is not able to come to Court and depose evidence, the plaintiffs have taken this application to eschew the evidence of P.W.1 as she may not be able to come again for deposing evidence.

4. Even though the learned counsel for the respondent / defendant vehemently objected that he should be allowed to file counter, it is pointed out by the Court that the plaintiffs have taken the liberty to choose their own witnesses and hence the proceedings cannot be adjourned for the purpose of filing counter.

5. However, the learned counsel for the respondent / defendant submitted that the plaintiffs 1 and 2 were husband and wife and they came out with different cause of action by seeking distinct prayers and in such a context, if P.W.1 does not choose to examine herself, the defendant would loose the opportunity of bringing out the essential facts from her evidence.

6. The plaintiffs have got the burden to prove their own case. If the plaintiffs have not chosen to produce any essential witness, that goes against the interest of the plaintiffs and the risk goes with them. Since these matters are for appreciation of evidence, this Court is not inclined to go into those aspects now.

7. Since it is a simple application filed to eschew the evidence of P.W.1, on certain inconvenience pointed out in the application, this application is allowed irrespective of its impact on the appreciation of evidence.

05.06.2023
gsk

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