

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.945 of 2015

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.29-01-2015 in E.A.No.169 of 2014 in E.A.No.171 of 2011 in E.P.No.60 of 2005 in O.S.No.194 of 1996 of the Principal Junior Civil Judge, Chittoor.

2. In E.A.No.171 of 2011, the petitioner filed affidavit in lieu of chief-examination and marked documents on 08-06-2012 and she was later cross-examined by the Advocate for 1st respondent on 15-06-2012. Thereafter P.W.2 was also examined and cross-examined.

3. In October, 2014 the 1st respondent filed E.A.No.169 of 2014 contending that her counsel, who cross-examined P.W.1, had suffered from paralysis and decreasing loss of memory and could not cross-examine P.W.1 with regard to Ex.P-1 to P-7 and certain other important material points with regard to claim petition schedule mentioned properties; the said advocate had died; thereafter she engaged another counsel and

obtained the deposition copies of P.Ws.1 and 2; after perusing the same, she had been advised to file E.A.No.169 of 2014 to recall P.W.1 for the purpose of further cross-examination with regard to above documents and other material points.

4. This application was opposed by petitioner who contended that the counsel for 1st respondent had completed the cross-examination of petitioner and other witnesses in its entirety; at that time the said counsel was supported by his wife; and the application lacks merit and is liable to be dismissed. She contended that the said counsel engaged by 1st respondent was attending the Courts regularly and conducting all his cases in all Courts till his death as prudent and Senior Advocate. It was also pointed out that the present advocate for

1st respondent had come on record about a year back and had examined the decree-holder as R.W.1, the Deputy Tahsildar, R.D.O's. Office as R.W.2 and R.W.3, who is the J.Dr., that this application to recall P.W.1 for cross-examination after lapse of 2 years is only intended to fill up the lacuna in the case and is not maintainable. It was also pointed out that the Advocate for

1st respondent had obtained certified copy of the deposition of P.W.1 on 16-08-2013 and her averment that

it was perused only recently, cannot be accepted.

5. By order dt.29-01-2015, the Court below allowed the said E.A. It observed that due to ill-health of the previous counsel of

1st respondent, P.W.1 could not be effectively cross-examine with regard to Exs.P-1 to P-10 and some material points; cross-examination of P.W.1 shows that though P.W.1 was cross-examined on three occasions, but she was not cross-examined covering all aspects including the documents Exs.P-1 to P-10; and therefore the Court is of the view that a chance has to be given to 1st respondent to recall P.W.1 so as to further cross-examine P.W.1.

6. Challenging the same, this Revision is filed.

7. Learned counsel for petitioner contended that the Court below erred in allowing the said application and ought to have taken note of the events set out in the counter affidavit filed by petitioner and the delay of more than 2 years in filing this application.

8. Learned counsel for 1st respondent refuted the above contentions and supported the order passed by the Court below.

9. I have noted the submissions of both sides.

10. Order XVIII Rule 17 C.P.C. entitles the Court to recall and examine witness, who had been examined and to put such questions to him as the Court thinks fit. The Supreme Court in **Vadiraj Naggappa Verneker (Dead) through L.Rs. Vs. Sharadchandra Prabhakar Gogate**^[1] observed that power to recall and examine witness is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties.

11. It is not disputed that the counsel for 1st respondent had cross-examined P.W.1 on three different dates i.e. 08-06-2012, 15-06-2012 and 21-06-2012. Later P.W.2 was also cross-examined by the same counsel on 10-09-2012. The 1st respondent had engaged a new counsel, who examined R.Ws.1 to 3, and 2 years after the evidence of P.W.1 was concluded, E.A.No.169 of 2014 was filed seeking to further cross-examine P.W.1 with regard to Exs.P-1 to P-7. In my considered opinion, it was not open to 1st respondent to take the plea that P.W.1 was not properly cross-examined by her earlier counsel, since admittedly this application had been filed more than 2 years after the evidence of P.W.1 was closed, that too,

after she had herself examined R.Ws.1 to 3. Obviously, filing of this application is an attempt by 1st respondent to fill up the lacuna in her case. Therefore,

I do not find that 1st respondent acted in a *bona fide* manner. So, the impugned order cannot be sustained.

12. Accordingly the Civil Revision Petition is allowed and the order

dt.29-01-2015 in E.A.No.169 of 2014 in E.A.No.171 of 2011 in E.P.No.60 of 2005 in O.S.No.194 of 1996 of the Principal Junior Civil Judge, Chittoor is set aside and the said E.A. is dismissed. No costs.

13. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 07-09-2015

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[\[1\]](#) AIR 2009 SC 1604