

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

C.R.P.No.4123 of 2015

ORDER:

Heard learned Counsel for the petitioner and learned counsel for the respondents.

2. The petitioner is plaintiff in O.S.No.125 of 2013 on the file of the Principal Senior Civil Judge, Mancherial. He filed the said suit for perpetual injunction restraining the defendants from interfering with the suit schedule land admeasuring 740 sq yrds in Sy.No.271 situated at Mancherial revenue village, Mancherial Municipality, Adilabad District.

3. Along with the suit, he filed 17 documents. He filed the affidavit in lieu of chief examination on 18.02.2015. On 19.02.2015, when the case was called, the counsel for the plaintiff was absent. In the absence of the counsel for the plaintiff, the witness was called to the witness box and was asked to depose without taking into consideration the affidavit filed in lieu of chief examination. In the absence of the counsel, the contents of the chief affidavit were not taken on file and 17 documents, which were filed with the plaint and which were indicated in the affidavit filed in lieu of chief examination, were not marked. The counsel for the defendants was also absent on 19.02.2015, and hence, no cross-examination was done and cross-examination of PW.1 was recorded as NIL. Thereafter, when the plaintiff filed I.A. No.448 of 2015 on 29.04.2015, the same was allowed on 06.08.2015. The said application was filed to reopen the case to adduce further evidence of the plaintiff. On 06.08.2015 itself PW.2 and PW.3

were examined and the case was posted to 13.08.2015. On 13.08.2015, PW.2 was cross-examined and PW.3 was called absent. PW.3 was cross-examined on 21.08.2015. The present application filed by the petitioner on 24.08.2015 to recall PW.1 to adduce his further chief examination and to mark his documents, was dismissed without even numbering the said petition on 03.09.2015. Challenging the same, the present civil revision petition is filed.

4. The docket proceedings revealed that on 03.09.2015 itself, the plaintiff side evidence was closed and it was posted to defendant side evidence to 18.09.2015. The counsel for the defendants reported no evidence on behalf of defendants on 18.09.2015, and the case was posted to 28.09.2015. The counsel for the plaintiff filed a petition seeking adjournment on the ground that he preferred a revision against orders in CRP No.1123 of 2015, dated 03.09.2015 and since no stay was granted, it was adjourned to 05.10.2015. On 05.10.2015, the counsel for the plaintiff filed a copy of the order in CRPMP No.5471 of 2015 indicating the grant of stay by this Court up to 30.10.2015 and the case was posted to 05.11.2015, and on that day, the counsel for the plaintiff was heard and judgment reserved.

5. The above events clearly show that the learned judge proceeded with the case in undue haste without following proper procedure while recording the evidence of the plaintiff.

6. In the affidavit filed to recall PW.1 to adduce his further chief examination and to mark his documents it is categorically stated in para-4 as follows:

“...I further submit that, I was examined by this

Honourable Court on 19.02.2015 orally as PW.1 and no documents were marked on my behalf as my counsel was not good at his health due to sudden death of his mother as such I myself examined as PW.1 but the documents were not marked and thereafter, I filed a petition to adduce my further evidence vide IA No.448/2015 and said petition was allowed, but I am not permitted to adduce my further chief examination and to get my documents but, my witnesses were examined as PWs.2 and 3 and the Honorable Court objected me to adduce my further chief examination and posted the case to 03.09.2015 for my further evidence as I have not asked to recall me to adduce my further chief examination as it is lacking in my prayer portion in petition. As such I am constrained to file the present petition to recall me to adduce my further chief examination and to get mark the documents in support of my case.

I further submit that the Honourable Court has got wide powers to recall me to adduce my further chief examination and to get mark my documents at this juncture and no prejudice will be caused to other side and if I am not recalled to adduce my further chief examination at this juncture I will be put to irreparable loss and hardship, which cannot be compensated later and I will be deprived of my legal right to adduce my evidence in support of my case and my further chief examination is compulsory to dispose the case effectively. It is further submitted that, the case is posted to 03.09.2015 for my further evidence..”

7. The learned judge did not advert to the fact of non-marking of the documents in spite of availability of the documents in the record, but recorded that PW.1 was examined on 19.02.2015 and when his evidence was completed on that day, the question of further examination does not arise. The learned judge should have seen that on 19.02.2015 the affidavit filed in lieu of chief examination was not taken into consideration and the witness was examined by the court in the absence of counsel for the plaintiff. This Court is not in a position to understand the anxiety of the court to examine the party in the absence of the counsel without

granting time and without putting the affidavit to the party. If the counsel was absent and the court wanted to go ahead with the examination of PW.1, the court should have drawn attention of the witness to the affidavit filed in lieu of chief examination and no attempt was made in that regard. Ultimately, the application was dismissed by holding as follows:

“..The present petition is recalling the witness for further chief examination. Sec.138 of Indian Evidence Act and Order 18 Rule 17 CPC, recalling the witness for further chief examination without cross examination, the question of calling him as the witness for further chief examination for marking documents without completing his cross examination does not arise. The question of marking of documents also does not arise. Recalling of witness for further chief examination to mark documents not filed in the court while deposing his chief examination. Here, the case on hand, the defendants are not cross examined the witness, therefore, the question of recalling the witness for further chief examination does not arise as it is hit u/sec.138 of Indian Evidence Act. I the foregoing discussion, the point is answered against the petitioner. Accordingly, the petition is dismissed...”

8. The observation of the Court that no documents were filed cannot be appreciated as the perusal of the plaint itself indicates 17 documents and those documents were referred in the affidavit filed in lieu of chief examination. A serious miscarriage of justice occurred due to the action of the learned Principal Junior Civil Judge, in examining the party on his own in the absence of the counsel on 19.02.2015 without referring to the affidavit filed in lieu of chief examination.

9. In these circumstances, the impugned order dated 03.09.2015 is set aside and PW.1 shall be recalled for his chief examination on the basis of the affidavit filed by him and be

allowed to mark the documents. He shall allowed to be cross-examined by the defendants and after consideration of the said evidence only, the suit shall be disposed of.

9. Accordingly, the Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any pending in this petition, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 31.12.2015

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