

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 1415 OF 2014

DATED 21ST December, 2015

BETWEEN

Mundlapudi Kamalamma (died) and anr

.Petitioners

And

Bandi Doraswamy Reddy and ors

....Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 1415 of 2014

ORDER:

-

The plaintiff in O.S.No.1060 of 2002 on the file of the learned I Additional Junior Civil Judge, Chittoor is the petitioner herein. Originally the first plaintiff (since deceased) filed the suit for declaration and injunction. She died after filing the suit and the second plaintiff came on record. He was examined as PW.1. In his depositions by mistake he stated that the original suit was filed for declaration and delivery of possession. The same was not correct. In those circumstances, in order to correct that mistake, he (second plaintiff) filed I.A.No.86 of 2014 for recalling of P.W.1 for the purpose of further chief examination by stating as follows:

“ I submit that the above suit is posted for arguments and at the time of preparation I came to know that during the course of cross examination it was elicited that I filed the suit for declaration and delivery of possession which is not correct. I filed the suit for declaration and for injunction and the reading of the entire plaint would show that I am in possession of the plaint schedule mentioned property and there is no question of filing the suit for delivery of possession. Apart from the same some more material aspects are required to be clarified by recalling myself as PW.1 with regard to measurements and entrance into the main street. The delay in filing this application is neither willful nor wanton.”

The said application was opposed by the respondents/defendants by filing a counter affidavit. Ultimately, the Court below dismissed the said application through the order under revision observing as follows:

“ Perused the cross examination of P.W.1 dated 7.6.2012. In the cross examination of P.W.1 dated 7.6.2012 P.W.1 categorically stated that the deceased 1st plaintiff has asked for possession and ownership over the plaint ‘A’ schedule property and exclusive right over ‘B’ schedule property and for declaration of joint right over the C schedule property. The admissions made by P.W.1 during his cross examination are crucial aspects which are against the pleadings of the plaintiff. The admissions made by a witness in his evidence cannot be permitted to patch up by recalling the witness. It seems the petitioner has filed this petition only in order to fill up the lacunae in the case of the petitioner/plaintiff, but not otherwise. If this petition is allowed the respondents will be put to irreparable loss and it will cause harm to the case of the defendants. Therefore, petitioner cannot be permitted to fill up the lacunae in his case.”

A perusal of the above order shows that the impugned

application was filed at the time of arguments and it is evident from the affidavit filed in support of the application that the suit was filed for a specific purpose and P.W.1 deposed on behalf of the plaintiff. It is for the parties to advance arguments in the matter based on the oral and documentary evidence as well as pleadings in support of their respective claims and based on the same, the Court had to take a decision. If there are any inconsistent issues in the oral & documentary evidence and pleadings, it is open for the respective parties to advance their respective arguments on the said issue. Merely because, a witness wrongly deposed, the so called witness cannot be called for further examination in that regard. In view thereof, this Court finds no valid and substantial reason to interfere with the order under revision.

The Civil Revision Petition fails and is accordingly dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 21st December, 2015.

Msnr_x