

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 4046 OF 2014

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 26.09.2014 in I.A.No. 844 of 2014 in O.S.No. 57 of 2005 of the Senior Civil Judge, Puttur, Chittoor District.

2. Petitioner herein is the first defendant in the above suit. Respondents 1-4/plaintiffs filed the suit against the petitioner and others for declaration of their right and title to plaint 'A' schedule mentioned property and for perpetual injunction restraining the petitioner and other defendants from interfering with their peaceful possession and enjoyment of the plaint 'A' schedule property.

3. Written statement was filed by petitioner opposing the suit claim.

4. Issues were framed and trial commenced.

5. After the examination of the plaintiff witnesses was completed, the case was posted for evidence of defendants.

6. Affidavit in lieu of chief examination of DW-1 was filed and an Advocate Commissioner was appointed to record her cross-examination at the residence of DW-1.

7. On 25.8.2012, according to the respondents 1 to 4, the cross-examination of DW-1 was scheduled, but the Advocate Commissioner did not bring the documents of the respondents/plaintiffs and he brought only the documents of the defendants from the custody of the Court. It is alleged by the respondents 1 to 4 that when they contacted him over cell phone about the documents, the Advocate Commissioner informed that he has not taken the documents of the plaintiff from the custody of the Court.

8. Since the cross-examination was scheduled on that day, according to respondents 1 to 4 they filed a memo before the Advocate Commissioner reserving their right to cross-examine the witness DW-1. They also filed two applications before the Court on 3.9.2012 to recall DW-1 with reference to documents filed by the plaintiff and to direct the same Advocate Commissioner to record the cross-examination.

9. Subsequently, a C.R.P. No. 4419 of 2012 was filed to stay the proceedings in the suit. The question therein was whether the defendants 2 & 3 were rightly set ex-parte or not. That revision was allowed and a memo was filed by the defendants 2 & 3 adopting written statements of first defendant.

10. According to respondents 1 to 4, they requested the Court to allow them to let in further evidence and the Court was pleased to permit the same on condition to file the chief affidavits of all the witnesses by 1.9.2014. They alleged that the respondents 1 to 4 had examined one witness and the matter ought to have posted to record further evidence on the side of the plaintiffs for the reason that already two applications filed by them to cross-examine DW-1 with reference to the documents and also to cross-examine them with reference to the case of the

defendants 2 and 3, who adopted the written statement of the first defendant, were filed.

11. Therefore, respondents 1 to 4 filed I.A.No. 844 of 2014 under Order 18 Rule 17 CPC to recall DW-1 for the purpose of further cross-examination of first defendant with reference to documents filed by the plaintiffs/respondents 1 to 4 and also to cross-examine her with regard to the case of the defendants 2 & 3 in the interest of justice.

12. Counter affidavit was filed by the petitioners/R5 & R6 opposing the said application. They denied the averments of the respondents 1 to 4 in the said I.A and contended that this application has been filed only to procrastinate the proceedings in the suit and there was no necessity for giving an opportunity to respondents 1 to 4 to again recall DW-1 for further cross-examination.

13. By order dated 26.9.2014, the Court below allowed I.A No. 844 of 2014.

14. In the said order it recorded that the respondents 1 to 4 did not get an opportunity to cross-examine DW-1 on the documents filed by the plaintiffs and this issue was raised specifically during the course of cross-examination of DW-1 before Advocate Commissioner. It therefore, held that the application is bonafide and therefore, the application was liable to be allowed by the impugned order dated 26.9.2014.

15. Challenging the same, this Revision is filed.

16. Heard learned counsel for the petitioner Sri O. Udaya Kumar and Sri K. Bathi Reddy, learned counsel appearing for the first respondent. None appears for respondents 2 to 6 even though notice on them has been served.

17. Counsel for the petitioner contends that the story of the respondents 1 to 4 that they did not have an opportunity to cross-examine DW-1 with regard to documents of the plaintiffs before the Advocate Commissioner cannot be accepted; that the Advocate Commissioner did not say so; in any event, since defendants 2 & 3 had only adopted the written statement of the first defendant, and there was no necessity for the Court below to permit the respondents 1 to 4 to cross-examine DW-1 with regard to the stand of defendants 2 & 3. He also placed reliance on the judgment of the Supreme Court in **Vadiraj Naggappa Vernekar (dead) through LRs V. Sharadchandra Prabhakar Gogate**^[1].

18. Counsel for the first respondent on the other hand reiterated the contentions of the petitioner and contended that the order passed by the Court below is correct and does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

19. I have noted the submissions of both sides.

20. Order 18 Rule 17 CPC empowers the Court at any stage of a suit recall any witness who has been examined and permits it to put such questions to him subject to the law of evidence as the Court thinks fit.

21. In **Vadiraj Naggappa Vernekar (dead) through LRs V. Sharadchandra Prabhakar Gogate** (supra), the Supreme Court interpreted the above provision that it empowers the Court

while trying the suit to clarify any doubts with regard to evidence led by the parties. It clarified that the said provision is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

22. In the present case, there is a finding of the Court below that when the Advocate Commissioner cross-examine DW-1 on 25.8.2012, he did not have the documents of plaintiffs with him and a memo was filed by the respondents 1 to 4 before the Advocate Commissioner who also signed it. No material is placed before this Court by the petitioner to dispute this fact. In this view of the matter, I find no illegality in exercise of discretion by the Court below in permitting the respondents 1 to 4 to recall DW-1 and permit him to cross-examine DW-1 with regard to documents filed by the plaintiff in the suit.

23. However, as regards the plea of the respondents 1 to 4 that they should also be allowed to cross-examine DW-1 with regard to his stand of defendants 2 & 3, is concerned, admittedly, defendants 2 and 3 have filed a memo adopting the written statement of the first defendant. They have not raised any new plea or any pleas contradicting the respondents 1 to 4. Therefore, it is not permissible for respondents 1 to 4 to seek permission to cross-examine DW-1 with regard to the case of defendants 2 & 3.

24. Therefore, the Revision is partly allowed and the Court below is directed to recall DW-1 for the purpose of further cross-examination of first defendant/DW-1 with reference to the documents filed by plaintiffs/respondents 1 to 4 only. There shall be no order as to costs.

25. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15.06.2015
KA

^[1] (2009) 4 SCC 410