

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.3166 of 2015**

**ORDER:**

This civil revision petition is filed by the petitioner–plaintiff under Article 227 of Constitution of India assailing the order dated 10.7.2015 passed in I.A. No.147 of 2015 in O.S. No.281 of 2009 on the file of the Principal Junior Civil Judge, Mancherial.

2. The parties to this revision will hereinafter be referred to as they are arrayed before the trial court.

3. The petitioner filed the suit for perpetual injunction against respondent Nos.1 to 3-defendant Nos.1 to 3 from interfering with his peaceful possession and enjoyment of suit schedule property, and mandatory injunction against respondent No.4-defendant No.4 (Tahsildar, Mandamarri Mandal, Adilabad District) to alter necessary entries in the revenue records. After completion of trial and hearing the learned counsel for both the parties, the trial court reserved the matter for judgment. At that stage, the petitioner filed I.A. No.147 of 2015 under Section 151 of the Code of Civil Procedure, 1908 (CPC), to reopen the suit and allow the petitioner to lead further oral and documentary evidence.

4. The respondent Nos.1 to 3 filed counter, opposing the petition. It is contended that after availing sufficient opportunities, the petitioner filed the present petition to cause delay in disposal of matter. The petitioner has already examined number of witnesses; therefore, there is no need to permit him to adduce any further evidence either oral or documentary. Therefore, the petition is not maintainable.

5. No evidence was adduced on behalf of either side. The trial court, after hearing the learned counsel for both parties and perusing the material available on record, dismissed the petition. Feeling aggrieved by the order of dismissal, the petitioner filed the present

revision.

6. The contention of learned counsel for the revision petitioner is three fold:

- (1) the trial court dismissed the petition without taking into consideration the prejudice likely to be caused to the petitioner;
- (2) even if the petition is allowed, no prejudice will be caused to the respondents; and
- (3) the order passed by the trial court is not sustainable either on facts or in law.

***Per contra***, learned counsel for the respondent Nos.1 to 3 submitted that the petitioner filed the present petition with an ulterior motive of protracting the proceedings. He further submitted that the petition under Section 151 of CPC is not maintainable after reserving the suit for judgment.

7. In view of the rival contentions, the points that arise for consideration are:

- (1) Whether the revision petitioner – petitioner has made out grounds for allowing the reopen petition?*
- (2) Whether the trial court has committed any illegality or irregularity while dismissing the reopen petition.*

**Point Nos.1 and 2:**

8. As can be seen from the record, the petitioner filed the suit for perpetual injunction against respondent Nos.1 to 3 and mandatory injunction against respondent No.4. During the trial, on behalf of the petitioner, P.Ws.1 to 5 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, D.Ws.1 and 2 were examined but, no document was marked. A perusal of the record further reveals that the trial court reserved the suit for judgment on 17.1.2015 and the petitioner filed the present petition on 31.1.2015.

9. In a suit for perpetual injunction, the petitioner has to establish his possession over the plaint schedule property as on the date of the filing of the suit. A perusal of the record reveals that the petitioner filed

I.A. No.841 of 2014 to reopen the matter and to adduce further evidence on behalf of the petitioner. The trial court allowed I.A. No.841 of 2014 on 24.11.2014. In pursuance thereof, the petitioner examined P.Ws.3 to 5. A careful perusal of the order passed in the I.A. reveals that the petitioner has changed Advocates on number of occasions.

10. The petitioner is very much aware that the suit was reserved for judgment on 17.1.2015. For one reason or the other, the petitioner has not filed present I.A., till 31.1.2015. The petitioner has not assigned reasons much less cogent and valid reasons in the affidavit filed accompanying the petition, for non-filing of reopening petition up to 31.1.2015. It is not out of place to extract hereunder the relevant portion of the affidavit filed in support of the I.A.

*“My counsel could not move the petition for re opening the case to examine myself and lead secondary evidence with regard to **certain** documents and also could not file petition to summon the revenue officials to giving their evidence either on my behalf or as court witnesses.”*

The petitioner did not disclose the nature of the documents he wants to mark if the matter is reopened. He simply stated that he wants to mark certain documents. This itself clearly indicates that he is not sure which documents he wants to mark even if the suit is reopened. If really the documents are in the custody of the petitioner, what prevented him to mark the same when he was examined as P.W.1 or at the time of examination of P.Ws.3 to 5, in pursuance of the order dated 24.11.2014 allowing reopening petition in I.A. No.841 of 2014?

11. If the petitioner really wants to examine revenue officials in order to substantiate his case or demolish the stand of the respondent Nos.1 to 3, what prevented him to examine the revenue officials by taking appropriate steps? When the petitioner arrayed the Revenue Official as a respondent (Tahsildar, Mandamarri Mandal as respondent No.4), he should not expect that such official will come and depose on his

behalf. For one reason or the other, the petitioner did not raise even his little finger for examination of revenue officials up to 17.1.2015 when the suit was reserved for judgment. The names or designations of revenue officials, whom he wants to examine if the matter is reopened, is also not mentioned in the affidavit. There is no mention in the affidavit that some of the documents filed by the petitioner were not marked through him due to reasons beyond his control. The petitioner filed the affidavit without disclosing the reasons much less cogent and valid reasons for reopening of the suit more particularly when it was reserved for judgment. The court has to take into consideration the prejudice likely to be caused to the parties to the proceedings while disposing of the petitions of this nature. The possibility of filing of this type of petitions in order to protract the proceedings as long as possible cannot be ruled out completely. The learned counsel for the respondent Nos.1 to 3 has drawn my attention to **Bagai Construction**

**v M/s.Gupta Building Material Store**<sup>[1]</sup>. In para 11 of the said judgment, it was held as under:

Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the petitioner cannot be permitted.

As per the principle enunciated in the case cited supra, the court has to exercise discretionary power vested in it by virtue of Section 151 of CPC judiciously basing on sound principles of law in order to secure ends of justice. As observed earlier, the trial court has given an opportunity to the petitioner to adduce further evidence by allowing I.A. No.841 of 2014. This clearly indicates that the trial court has given reasonable opportunity to the petitioner to adduce evidence in order to establish his case. Further, the affidavit filed in support of the petition

does not disclose reasons much less valid reasons. The court should not allow this type of petitions in a routine manner. The facts of the case on hand are almost identical to the facts of the case cited supra.

12. Taking the facts and circumstances of the case, I am of the considered view that the order under revision does neither suffer from any fundamental infirmity nor any jurisdictional error, which warrants interference of this court under Article 227 of the Constitution of India. Accordingly, the points are answered.

13. In the result, the civil revision petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

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**T.SUNIL CHOWDARY, J**

Date: 22.9.2015.

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[\[1\]](#) AIR 2013 SC 1849