

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.3527 of 2015

&

CRP No.3548 of 2015

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Date:01.10.2015

Between:

Amradi Prabhakar

... Petitioner.

AND

Guduru Srinivas and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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COMMON ORDER:

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These two revisions are preferred aggrieved by the orders of the Senior Civil Judge, Siddipet in E.A.Nos.10 & 11 of 2015 in E.A.No.27 of 2013 in E.P.No.44 of 2012 in O.S.No.137 of 2012.

2. The revision petitioner herein is decree holder in O.S.No.137 of 2012 who filed E.P.No.44 of 2012 for execution of the decree. A third party claim petitioner filed E.A.No.27/2013 claiming the suit schedule property and the Executing Court conducted enquiry in the said E.A.No.27 of 2013. On behalf of claim petitioner, P.Ws.1 & 2 are examined and on behalf of decree holder i.e., revision petitioner, R.Ws.1 & 2 are examined and thereafter, arguments were heard on behalf of both sides and at the time of arguments, decree holder filed two applications; one to reopen the case and the other to recall P.W.2 to put two documents to the witness, which are already on record on the ground that those two documents are material and important in deciding the claim petition. That application is resisted by the claim petitioner on the ground that the applications are filed at a belated stage and recalling of witness would amount to filling up of lacunas in the case of the decree holder and the trial Court accepting the objection of the claim petitioner dismissed both the applications. Aggrieved by the same, these two revisions are filed.

3. Heard both sides.

4 Advocate for revision petitioner submitted that the claim petitioner based his claim on the basis of agreement of sale dated 05-02-1998 though the said agreement is filed into Court, the claim petitioner did not get it marked and the decree holder wants to get that agreement marked. He further submitted that a registered sale deed dated 15-03-1995 is also available on record and that document is the sale deed executed by the vendor of the claim petitioner in favour of third parties and that document has to be put to P.W.2 and for that reason, application to recall P.W.2 is filed to get those two documents marked and the trial Court without giving any opportunity, dismissed the application on the ground that it would amount to filling up of lacunas.

5. On the other hand, Advocate for respondent-claim petitioner submitted that claim petitioner has not based his title on the agreement of sale and he has based his claim on the registered sale deed executed by his vendor. He further submitted that the trial Court heard arguments of both sides and at the fag end of the case, the present applications are filed only with view to answer the objections raised in the arguments, which would amount to filling up of lacunas and the same cannot be permitted and that the trial Court has rightly dismissed the applications and that there are no grounds to interfere with the order of the trial Court.

6. Learned Advocate for respondent placed reliance on judgment of this Court reported in **Shaik Gousiya Begum v. Shaik Hussain and others** and also judgment of Hon'ble Supreme Court in **Vadiraj Nagappa Vernekar (deceased by L.Rs.) v. Sharad Chand Prabhakar Gogate**.

7. I have perused the material papers including the impugned order dated 24-06-2015. As seen from the record, revision petitioner obtained a decree in O.S.No.137/2012 and in pursuance of said decree, he filed execution petition for recovery of possession and at that stage, first respondent herein filed a claim petition contending that he is owner of the plaint schedule property and objected for delivery of the property. There is no dispute that claim petition has to be decided just like a suit and the Court has to give finding as to the correctness of the objection raised by the claim petitioner over the suit schedule property. Admittedly, it is an *ex-parte* decree, wherein judgment debtor has not contested the suit. Now the simple point involved in this case is whether the documents sought to be put to P.W.2 by recalling him would amount to filling up of lacunas in the case of decree holder. It is not in dispute that both the documents which the decree holder wants to put to P.W.2 are available in the Court record, but for the reasons beyond the control of the revision petitioner those documents were not put to P.W.2 and not marked during enquiry in E.A.No.27/2013.

8. In **Shaik Gousiya Begum v. Shaik Hussain and others**¹, this Court by following decision of Hon'ble Supreme Court in **Vadiraj Nagappa Vernekar (deceased by**

L.Rs.) v. Sharad Chand Prabhakar Gogate² held that Court cannot exercise its powers for recalling a witness under Order 18 Rule 17 if such recall would amount to filling up of lacunas. In that case, after completion of the evidence, an application was filed to summon a witness by name Boinapalli Badramma and the trial Court dismissed the application on the ground that the application was filed at a belated stage and steps were not taken at the earliest point of time though suggestions were put to other witnesses and to the party herself, in those circumstances, the Court held that it would amount to filling up of lacunas, but here in our case, the proposed documents are already available on record and it is not a case of filing those documents now along with the recall petition or requesting the Court to summon any documents, therefore, that decision cannot be made applicable to the facts of this case. As seen from the material, it appears that though these two documents were available on record, they were not put to P.W.2 while he was in witness box and even the decree holder has not referred to these documents when he was examined as a witness, therefore, considering these aspects and the fact that the documents are already available in the Court, I am of the considered view that this would not amount to filling up of lacunas and therefore, those two decisions relied on by respondent's counsel have no application.

9. Since the revision petitioner wants to put the documents available on record to the witness P.W.2, I feel that the trial Court ought to have given an opportunity to the revision petitioner so that the issue can be decided taking those documents also into consideration whether the claim of the third party was genuine or not. Considering these aspects, I feel that the trial Court committed error in dismissing the application and the orders of the trial Court have to be set aside. Accordingly, revisions are allowed and the impugned order dated 24-06-2015 is set aside and the trial Court shall permit the petitioner herein (Dhr) to put these two documents to P.W.2 and to that extent only, the decree holder is permitted and he cannot be allowed to put any further questions.

10. With above observation, both the revisions are allowed.

No costs.

11. As a sequel, miscellaneous petitions, if any, pending in these Civil Revision

Petitions, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:01.10.2015

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