IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

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C.R.P.No.3603 of 2014

Between:

M/s.Nellimerla Jute Mills

.....Petitioner

and

Kollapalli Ramesh and others.

.....Respondent

Date of Judgment pronounced : 07-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3603 of 2014

ORDER:

Heard Sri Koka Satyanarayana Rao, learned counsel

for the petitioner and none appears for the respondents.

2. This Revision Petition is filed challenging the Order dt.05-09-2014 in I.A.No.1095 of 2014 in O.S.No.161 of 2004 of the Senior Civil Judge, Vizianagaram.

3. Petitioner herein is the plaintiff in the suit. It filed the suit against respondent Nos.2 to 4 to declare their action in conducting survey, subdivision and consequential incorporation of the entries in the revenue records regarding Sy. No.45/1 and 2 as Sy. No.45/1/A1 as void, illegal and arbitrary and for other reliefs including relief for declaration that the B schedule property is the absolute property of the petitioner.

4. In the suit, the evidence on the side of the plaintiff was closed in 2009. The 1st respondent, who was third party, filed I.A.No.1140 of 2008 to implead him in the suit claiming a portion of the land which is subject matter of the suit. By order dt.21-08-2009, the Court below dismissed the said application.

5. Challenging the same, he filed C.R.P.No.4649 of 2009 and the said Revision Petition was allowed on29-06-2010.

6. Having thus been impleaded pursuant to the order

dt.29-06-2010 in C.R.P.No.4649 of 2009, 1st respondent

kept quiet for a period of four years and on 04-08-2014, he filed I.A.No.1095 of 2014 to recall P.W.1 so that he can get an opportunity to cross examine him. In the affidavit filed in support of the said application, he merely stated that he was impleaded in the suit after the evidence of P.W.1 was completed and he had no opportunity to cross examine P.W.1 and therefore the Court should recall P.W.1 so that he could cross examine him. No reason is assigned by 1st respondent as to why he kept quiet for a period of four years after his impleadment and then filed this application.

7. Counter affidavit was filed by the petitioner opposing grant of any relief in I.A.No.1095 of 2014 to 1st respondent and it was contended that 1st respondent has not pointed out which part of the evidence of P.W.1 went against him which is required to be challenged by cross examining P.W.1. It was also pointed out that the case of 1st respondent was that there was an assignment of Ac.15.00 cts of land by the petitioner to the Workers Cooperative Society and the said Society had allotted a plot to him and this aspect has to be established only by his evidence and not by cross examining P.W.1. It was also contended that this application is filed only to drag on the matter for as long as time as possible and the petition is not *bona fide* inasmuch as 1st respondent had not

vacated a quarter allotted by the petitioner as he has already retired from the service of the petitioner long back and consequently gratuity was withheld.

8. By order dt.05-09-2014, the Court below allowed the said application on the ground that the 1st respondent is entitled to cross examine P.W.1 and it would be inconformity with the principles of natural justice.

9. Challenging the same, this Revision Petition is filed.

10. Although notice in this Revision Petition is served on 1st respondent, there is no representation on his behalf. Therefore, the matter is being decided *ex parte.*

11. In the absence of any explanation by 1st respondent in the affidavit filed by him in support of I.A.No.1095 of 2014 for his silence for a period of four years from the date of his impleadment, it cannot be assumed that the application filed by 1st respondent seeking permission to cross examine P.W.1 is *bona fide.* If he really had any grievance about the evidence given by P.W.1 in the matter, he would have immediately taken steps to cross examine P.W.1 instead of keeping quiet for four years and allowing the trial to proceed and conclude.

12. Also order 18 Rule 17 CPC invoked by 1st

respondent entitles only the Court at any stage to recall any witness who has been examined and put questions to him and the said power was held by the Apex Court in **Vadiraj Naggapa Vernekar (D) Through Legal Representatives Vs. Sharad Chand Prabhakar Gogate**[1] to be sparingly exercised only in an appropriate cases but not as a general rule on the ground that such recall and re-examination would not cause any prejudice to the parties.

13. Therefore, the order passed by the Court below cannot be sustained.

14. The Civil Revision Petition is accordingly allowed and the order dt.05-09-2014 in I.A.No.1095 of 2014 in O.S.No.161 of 2014 of the Senior Civil Judge, Vizianagaram is set aside and the said I.A. is dismissed. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-08-2015
kvr

[1] AIR 2009 S.C. 1604