

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL REVISION PETITION Nos.3558 and 3591 of 2015

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04.09.2015

Between:

Kothamasu Venkata Siva Naga Dhana Lakshmi
...Petitioner

And
Tondepu Venkata Rama Mohan Rao and others
...Respondents

Counsel for the petitioner: Mr.V.Padmanabha Rao

Counsel for the respondents: --

The Court made the following:

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COMMON ORDER:

C.R.P.No.3558 of 2015 arises out of order, dated 20.08.2015 in I.A.No.1676 of 2015 filed by the petitioner/plaintiff in O.S.No.80 of 2012 on the file of the learned Senior Civil Judge, Mangalagiri, for reopening the suit, and C.R.P.No.3591 of 2015 arises out of order, dated 20.08.2015 in I.A.No.1677 of 2015 filed by the same person in the same suit for recalling D.W.1 for further cross-examination.

The petitioner, who is common in both these revision petitions, filed the aforementioned suit for partition of the plaint schedule properties in three equal shares and allotment of one such share to her. The trial in the said case was closed and the case stood posted to 11.08.2015 for arguments. At that stage, the petitioner filed the aforementioned I.As. The lower Court, however, dismissed both the said I.As. Feeling aggrieved by the same, the unsuccessful applicant in the said two I.As. filed these two revision petitions.

A perusal of the affidavit filed in support of I.A.No.1676 of 2015 shows that the only ground on which the petitioner sought reopening of the suit was that during the cross-examination of D.W.1, by oversight, some important material questions with regard to the inconsistent pleadings of the witness were not put and therefore, in order to put those questions to D.W.1, it was necessary to reopen the defendants' side evidence.

The lower Court placed reliance on the judgments of the Apex Court in **Vadiraj Nagappa Vernekar (D) Through L.Rs. vs. Sharadchandra Prabhakar Gogate**^[1] and of this Court in **Shaik Gousiya Begum vs. Shaik Hussain and others**^[2], while dismissing the aforesaid I.As.

At the hearing, the learned counsel for the petitioner relied upon the judgment of the Madras High Court in **Muthukaruppan alias Velayutham vs. Suresh Alias Muthukaruppan**^[3].

The legal position is well settled that a party cannot ask for reopening of the evidence just for mere asking. As held by the Supreme Court in **Vadiraj Nagappa**, the power to recall a witness for further cross-examination is to be sparingly exercised in appropriate cases and not as a general rule merely on the ground that no prejudice will be caused to the other side if the evidence is reopened. In **Shaik Gousiya Begum**, this Court held that evidence cannot be reopened for filling up the lacunae in it.

It is evident from the averments of the petitioner made in the affidavit filed in support of the aforesaid I.As. that she wanted reopening of the evidence for further cross-examination of D.W.1 for putting certain questions, which were not put to him by oversight. It is, thus, clear that in order to fill the lacunae in the evidence, the petitioner wanted reopening of the evidence. This is precisely what is forbidden by law as interpreted by judicial precedents. Hence, the lower Court has rightly rejected the request of the petitioner for reopening of the evidence and I do not find any illegality or jurisdictional error in the orders passed by the lower Court in dismissing the aforesaid I.As. filed by the petitioner.

For the aforementioned reasons, both these Civil Revision Petitions are dismissed.

As a sequel to dismissal of these Civil Revision Petitions, C.R.P.M.P.No.4787 of 2015 in C.R.P.No.3558 of 2015 and C.R.P.M.P.No.4828 of 2015 in C.R.P.No.3591 of 2015 filed by the petitioner for interim reliefs shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

04th September, 2015
GHN

[\[1\]](#) (2009) 4 SCC 410

[\[2\]](#) 2014(1) ALT 268

[\[3\]](#) LAWS(MAD)-1999-7-57 = TLMAD-1999-0-709