

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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CIVIL REVISION PETITION Nos.1810 and 2897 of 2015

BETWEEN

V. Varadarajulu and another.

... PETITIONERS

AND

K. Gunasekhar.

...RESPONDENT

DATE OF JUDGMENT PRONOUNCED: 27.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

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COMMON ORDER:

Petitioners are defendants in O.S.No.264 of 2011 on the file of the Principal Junior Civil Judge, Chittoor. In the said suit, the respondent/plaintiff examined himself and P.W.2, who have also been cross-examined. While the said suit was coming up for further evidence of the plaintiff, I.A.Nos.170 and 171 of 2015 were filed by the respondent/plaintiff seeking to recall P.W.1 and for marking of documents under Order 18 Rule 17 of the Civil Procedure Code and also seeking leave of the Court to receive documents under Order 7 Rule 14(3) CPC respectively. The said applications were contested by the petitioners/defendants on the ground that the documents could have been filed by the plaintiff much earlier but in spite of their availability, he has chosen to file the documents and only after his cross-examination is over, the documents are sought to be filed to nullify the admissions of P.W.1 in the cross-examination.

The trial Court on consideration of the matter was, however, of the opinion that receiving of documents will not damage or destroy the evidence given by P.W.1 in the cross-examination and also in view of the fact that the revenue documents of the year 2015 are sought to be produced, the same can be received in evidence and the plaintiff can be recalled for cross-examination and it would not amount to filling up of lacunae in the evidence of P.W.1. Questioning the said common order dated 02.04.2015, the petitioners filed these two revision petitions.

2. I have heard learned counsel for the petitioner, who pointed out that, in the cross-examination, P.W.1 had admitted that he did not file any document to show that he is residing at Naragallu village.

P.W.1, further, volunteered and stated that he has handed over proof to his counsel. P.W.1 also further stated that he did not file extract of 1(B) to show that as on the date of filing of suit, he was in possession and enjoyment of

the suit property. P.W.1 further admitted that he did not file any proof to show that he planted mango saplings in the year 2004 and did not file any record to show that my mother is suffering ill-health.

3. It is on these admissions, learned counsel for the petitioner contends that it is an attempt on the part of the respondent/plaintiff to file 1-B Namoon and adangal obtained by him from meeseva and the ration card and aadhaar card cannot be permitted to be filed as they would amount to filing of lacunae in the evidence, on record, as above. Learned counsel for the petitioner places strong reliance on the decisions of the Supreme Court in **VADIRAJ NAGAPPA VERNEKAR (DEAD) v. SHARADCHANDRA PRABHAKAR GOGATE**^[1] and **BAGAI CONSTRUCTION v. GUPTA BUILDING MATERIAL STORE**^[2].

4. In **VADIRAJ NAGAPPA VERNEKAR's case** (1 supra) it has been authoritatively held that though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by parties. However, the said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. On the facts of that case, the Supreme Court found that the new facts were not shown as subsequent discoveries and in fact, the witnesses gave affidavit in lieu of chief examination and no satisfactory reason was given as to why these new facts now proposed to be recalled were not mentioned. In that fact situation, the recall of witness was not permitted. However, the Supreme Court also noted that the power of recalling a witness under Order 18 Rule 17 CPC can be exercised by a Court on its own motion or on an application filed by any of the parties to the suit but the Court has to exercise its discretion.

5. The decision in **BAGAI CONSTRUCTION**'s case (2 supra) reiterates the same principle. However, on facts, it is found that the recall was not permitted in view of the fact that during the entire trial, the documents proposed to be filed by recalling wherein exclusive possession of the plaintiff and the final arguments were heard number of times and judgment was reserved and thereafter, the plaintiff came up with an application under Order 18 Rule 17 CPC to file certain new documents.

6. In the present case, however, the facts stand on a different footing inasmuch as the plaintiff's evidence is not yet closed and suit is coming up for further evidence. The right of parties to lead evidence including filing of documents by obtaining appropriate leave under Order 7 Rule 14 CPC is entirely for the discretion of the Court and as rightly held by the trial Court no prejudice would be caused to the petitioner, as respondent/plaintiff secured 1-B Namoon only in 2015 and other documents through meeseva and that he may be having ration card or aadhaar card, but the same was not filed in the suit, however, that would not cause any prejudice to the petitioners, as the petitioners would have right to cross-examine P.W.1 even on the new documents and would be entitled to lead rebuttal evidence. I do not see any reason to interfere with common order of the court below.

The civil revisions are dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 27, 2015
DSK

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

[\[2\]](#) (2013) 14 SCC 1