

HONOURABLE SRI JUSTICE G. CHANDRAIAH

CIVIL REVISION PETITION No. 296 OF 2013

DATED 20TH FEBRUARY, 2015.

BETWEEN

Smt. Kanthimahanti Satyananda Vijaya Bharatha Lakshmi

.....Petitioner

And

Sekharmahanti Jnanodayam and ors

...Respondents.

HONOURABLE SRI JUSTICE G. CHANDRAIAH

CIVIL REVISION PETITION No. 296 OF 2013

-
ORDER:

-
The petitioner herein is the plaintiff. She filed suit in O.S.No.789 of 2010 against the respondents for declaration that she is entitled to the half share from and out of the unspecified and undivided ground area of the plaint schedule mutual lane together with the relief of mandatory injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the plaint schedule property. After the closure of the evidence and when the suit is posted for arguments, the petitioner filed I.A.No.448 of 2012 under Section 151 CPC seeking to re-open evidence on her side and receive the chief/evidence affidavit of P.W2. The Court below, however, dismissed the said IA through the order under revision holding that though the matter was adjourned several times for adducing

evidence, the petitioner/plaintiff did not adduce evidence of PW.2 and that when the matter is posted for arguments after closure of evidence, exercise of powers under Section 151 CPC cannot be permitted to reopen the evidence at the belated stage of being posted the matter for arguments. Hence this civil revision petition by the petitioner/plaintiff.

Learned Counsel for the petitioner submitted that curtailing the petitioner/plaintiff to adduce evidence amounts to violation of principles of natural justice. He submitted that there are bonafides on the part of the petitioner in collecting the evidence of PW.2 which is crucial for deciding the suit.

On the other hand, learned Counsel for the respondents supported the order of the trial court. He further submitted that the trial Court considered the application in the proper perspective and rightly dismissed the same which do not warrant interference by this Court in this revision petition.

Perused the material available on record.

At the outset, it is relevant to note that Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re-open the evidence for adducing evidence. However, if a party had an

opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, and nothing more, the court should invariably reject the application.

As could be seen from the material available on record and having regard to the submissions advanced by the learned Counsel on either side, it emerges that the trial in the suit commenced on 29.06.2011 by filing the chief affidavit by the petitioner/plaintiff, and she was examined as PW.1. After framing additional issues, the petitioner took four adjournments to adduce the evidence of proposed PW.2, however, he was not available to adduce evidence and therefore the trial Court closed the evidence of petitioner/plaintiff on 26.04.2012 and posted the matter for respondents/defendant's evidence. D.W.1 was examined on behalf of the respondents/defendants and thereafter reported 'no evidence' on their side on 09.08.2012. Hence, the trial Court posted the matter for arguments on 21.08.2012. At this stage, the petitioner filed the impugned interlocutory application under Section 151 CPC seeking reopening of evidence on the ground that P.W.2 is available and that his evidence is crucial to prove the suit claim.

Though a litigant should not be made to suffer for the fault of its advisors or functionaries, responsible for the lapse, but at the same time, production of evidence sought for at the belated stage can be taken note of. Though power under Section 151 CPC 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, availing of abnormal adjournments for adducing plaintiff's evidence and filing of the application after closure of defendants evidence and when the matter is posted for arguments as well, I am of the view that even by exercise of power under Section 151 CPC, the plaintiff/petitioner cannot be permitted. The trial Court, in fact considering the matter in proper perspective rightly dismissed the application.

For the foregoing discussion, this Court finds no illegality or irregularity in the order under revision and therefore, the Civil Revision petition is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration if any in the revision petition shall stand closed. No order as to costs.

JUSTICE G.CHANDRAIAH

DATED 20TH FEBRUARY, 2015.
Msnr_x

.