

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

FRIDAY, THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND FIFTEEN

PRESENT

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

C.R.P. No.1141 of 2015

-

Between:

Sri Gunji Adi Seshu and another

... Petitioners

And

Sri Pinninti Sridhar

... Respondent

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

C.R.P. No.1141 of 2015

ORDER :

This revision petition has been filed questioning the order dated 02.03.2015 passed in I.A. No.2336 of 2014 in O.S. No.135 of 2005 by the learned VII Additional District Judge, (Fast Track Court), Visakhapatnam.

Revision petitioners and the respondent are the defendants and the plaintiff, respectively.

Brief facts of the case are that the plaintiff filed suit for cancellation of the sale deed dated 26.07.2002 executed by him in favour of the 2nd defendant on the strength of the registered sale agreement cum power of attorney dated 31.12.2001. The plaintiff was examined himself as P.W.1 and was also cross examined. Thereafter, D.W.1 i.e.

1st defendant was examined and Exs.B-8 to B-11 were also got marked and then the matter was posted for his cross examination. At this stage, the defendants filed I.A. No.2336 of 2014 under Order XVIII Rule 17 read with Section 151 CPC seeking to recall P.W.1 for further cross examination to meet the ends of justice and that was dismissed vide impugned order. Assailing the same, present revision petition has been filed.

The learned counsel for the revision petitioners would submit that though the P.W.1 was examined and cross examined but during cross examination of P.W.1 his counsel did not cross examine P.W.1 on material aspects like encashing the cheque for Rs.3,00,000/- and also the circumstances leading to entering into the development agreement with the plaintiff and it might be out of sight. Therefore, it is necessary to cross examine the P.W.1. The Court below, without proper appreciation of the

issues, dismissed the said I.A., erroneously. Unless and until the P.W.1 is recalled for further cross examination, ends of justice would not meet.

On the other hand, the learned counsel for the respondent, plaintiff, would submit that the matter pertains to the year of 2005 and on one reason or the other, the defendants are trying to prolong the issue. It is further submitted that the P.W.1 was examined and cross examined at length for two days and thereafter, P.W.2 was also examined and the evidence of plaintiff was closed. Later, D.W.1 was examined and Exs.B-8 to B-11 were got marked and thereafter, the matter was posted for his cross examination. At this stage, with *mala fide* intention to protract the issue, the revision petitioners filed the said I.A. and the Court below, after proper appreciation of the entire material on record, rightly dismissed the said I.A. Therefore, interference of this Court is not required with the impugned order.

Heard the learned counsel for the revision petitioners and the learned counsel for the respondent and perused the material on record.

The main contention of the learned counsel for the revision petitioners is that during cross examination of P.W.1, due to oversight, certain material aspects like encashing the cheque for Rs.3,00,000/- and also the circumstances leading to entering into the development agreement with the plaintiff, could not be cross examined. Therefore, he sought to recall P.W.1 for his cross examination once again.

It is an admitted fact that the P.W.1 was cross examined for two days. From a perusal of the impugned order, it is clear that the issue of encashing the cheque for Rs.3,00,000/- and as such also the circumstances leading to entering into the development agreement with the plaintiff were discussed in detail and understood that the P.W.1 was cross examined at length. Though the matter pertains to the year of 2005 and the P.W.1 was cross examined in the month of January, 2011, the said I.A. was filed in the year 2014. During cross examination of P.W.1, he categorically admitted that he has received cheque for Rs.3,00,000/- from the 1st defendant but denied the suggestion of the defendants that without intimating the 1st defendant he has deposited the said cheque for encashment, which was given by way of security deposit

under Ex.A-1 agreement while volunteering that he has deposited the said cheque for encashment only after intimation to the 1st defendant but the said cheque was bounced and thereafter, he has issued Ex.B-6 notice to the 1st defendant through his counsel for which, the 1st defendant had also issued Ex.B-7 reply notice and further volunteered that after receiving Ex.B-6 notice, the 1st defendant came to him and paid the cheque amount by way of demand draft and without encashing the same, he filed it before the Court while denying the suggestion of the defendants that the 1st defendant did not handover the said demand draft towards the cheque bounce amount but the same was handed over in furtherance of the agreement, which was entered by him with the 1st defendant after issuance of Ex.B-6 notice and in pursuance of said agreement he gave consent to the 1st defendant to sell half of the plaint schedule property i.e. B-schedule property and as such the 1st defendant sold B-schedule property to the 2nd defendant.

Since it is clear from the above that the contentions raised by the learned counsel for the revision petitioners before this Court have already been properly appreciated by the Court below and did not commit any error in passing the impugned order, I do not see any reason to interfere with the impugned order. Hence, the present revision petition is liable to be dismissed and accordingly, dismissed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

Date: 17.04.2015

LSK