

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION Nos.3292, 3327, 3357 & 3427 of 2015

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COMMON ORDER:

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. The four civil revision petitions are disposed of by this common order.

3. O.S.No.1074 of 2007 was filed by respondents 1 and 2 herein seeking specific performance of the Agreement of Sale, dated 21.01.2003, for purchase of Ac. 0.10 guntas of land in Medchal.

4. C.R.P.No.3357 of 2015 arises out of the order, dated 02.09.2014, in I.A.No.854 of 2014 filed for summoning D.W.1 for further cross-examination. C.R.P.No.3292 of 2015 arises out of an order, dated 09.07.2015, dismissing the I.A.No.176 of 2015 in I.A.No.854 of 2014 filed for refund of costs. C.R.P.No.3327 of 2015 arises out of an order, dated 02.09.2014, in I.A.No.855 of 2014 for reopening the matter for further cross-examination of D.W.1. Lastly, the C.R.P.No.3427 of 2015 arises out of an order, dated 09.07.2015, in I.A.No.175 of 2015 filed for refund of costs.

5. In the above suit, the defendants filed written statement on 25.07.2008 specifically pleading that the property was sold for Rs.1,36,30,000/- and not for Rs.36,30,000/- and the plaintiffs deliberately removed the first two pages of the Agreement of Sale containing the above terms and conditions and replaced it with different terms and conditions of Agreement of Sale. The evidence was completed on behalf of the plaintiffs and defendants. At that stage, the plaintiffs filed I.A.Nos.854 and 855 of 2014 for reopening and recall of D.W.1 for further cross-examination. Against the cross-examination which was closed on

01.09.2014, they were allowed to cross-examine on 02.09.2014 on payment of Rs.1,000/- each. The costs were paid to the learned counsel for the defendants. Thereafter, the petitioners filed I.A.(SR).Nos.5419 & 5420 of 2014 in I.A.Nos.854 and 855 of 2014 for seeking permission of the Court to refund the costs received inadvertently by the Junior Colleague in the Office of the learned counsel for the petitioners. Those two applications were later on numbered and dismissed, against which the petitioners filed C.R.P.Nos.4100 and 4101 of 2014 and the said C.R.Ps were also dismissed on 27.02.2015 on the ground that the validity of those orders can be considered after considering the validity of orders in I.A.Nos.854 and 855 of 2014. Now the present civil revision petitions arise out of the said two impugned orders as well as the two subsequent orders seeking permission to refund the costs. Be that as it may, the validity of the orders in I.A.Nos.854 and 855 of 2014 are before this Court in C.R.P.Nos.3357 and 3327 of 2015.

6. The affidavit was filed by respondents 1 to 3 herein in support of the applications in I.A.Nos.854 and 855 of 2014 mainly on the following grounds:

“I Submit that the allegations of the Respondents/defendants is that the Petitioner/Plaintiff have removed the first two papers of the agreement upon which the exact consideration has mentioned, regarding that the counsel for the Petitioner/Plaintiff have not stressed his cross examination, the lis was entirely involved in the above said aspect upon which prima facie of the case is involved, regarding that after long discussion with the Counsel for Petitioner/Plaintiff, I have decided to Recall the DW1 for further cross examination, by Re-opening the case by setting aside the orders dated 10-6-2014 in the above said suit, if the Respondent/defendant was not called for further cross-examination by Re-opening the case I shall be put to great irreparable loss and injury which cannot be compensable by any other means.”

7. The petitioners herein filed a counter affidavit stating as follows:

“In reply to para 4 it is submitted that the written statement which was filed in 2008 itself contained the said plea and also an issue was framed, which are matter of record. The allegation that after consulting with their lawyers they thought that their counsel had not stressed upon the said material

alteration issue and they want to recall and reopen the evidence of the DW1 for further cross examination is only to harass the respondents/defendants by dragging the proceedings not to mention that the said petition clearly states that they want to cover up and to fill up the lacunas which is not permissible under law.”

8. In the light of the above averments in the petition and the counter, the lower Court passed an order on 02.09.2014 as follows:

I.A.No.854 of 2014:

“I perused the record and found that a reasonable opportunity is to be given to the petitioner to recall D.W-1 for the purpose of cross-examination. No prejudice will be caused to either of the parties if the petition is allowed. Utmost the matter will be disposed of on merits. Under such circumstances, this petition is allowed on payment of costs of Rs.1000/- payable to the respondents.”

I.A.No.855 of 2014:

“I perused the record and found that a reasonable opportunity is to be given to the petitioner to reopen the case for the purpose of recalling D.W-1 for cross-examination. No prejudice will be caused to either of the parties if the petition is allowed. Utmost the matter will be disposed of on merits. Under such circumstances, this petition is allowed on payment of costs of Rs.1000/- payable to the respondents.”

9. In the above circumstances, I called for the copy of the deposition of D.W.1 in order to see whether there was any deposition of D.W.1 with regard to the non-filing of the agreement in full form. D.W.1 stated in the chief with regard to those two aspects and cross-examination was also conducted on behalf of the plaintiffs. In the circumstances, I do not see any ground to recall D.W.1 for further cross-examination on that aspect of the matter. Ultimately, it is for the lower Court to give a finding on the basis of the evidence, oral and documentary, before the trial Court. The affidavit filed in support of the present applications in I.A.Nos.854 and 855 of 2014 does not indicate any other ground,

but the learned counsel for respondents 1 to 3 herein submits that he wanted to conduct cross-examination extensively on the said aspect. This is a later invention and no basis was made in the applications seeking recall of D.W.1.

10. In the circumstances, the order passed by the trial Court, dated 02.09.2014, is not proper and the trial Court shall endeavour to dispose of the suit as expeditiously as possible, but not later than 31.03.2016.

11. Accordingly, the impugned orders, dated 02.09.2014, in I.A.Nos.854 and 855 of 2014 in O.S.No.1074 of 2007 are set aside and the Civil Revision Petitions are allowed. In view of allowing C.R.P.Nos.3357 of 2015 and 3327 of 2015, the C.R.P.Nos.3292 of 2015 and 3427 of 2015 are also allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these civil revision petitions shall stand closed.

(A.RAMALINGESWARA RAO, J)

Date: 21st December, 2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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