

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5565 OF 2016

ORDER :

Heard learned counsel for the petitioners and with his consent, this Revision is taken up for disposal at the stage of admission itself.

The petitioners, who are the defendants in O.S.No. 22 of 2008 on the file of VI Additional District Judge's Court at Nellore, filed this Revision under Article 227 of the Constitution of India, seeking to assail the order dated 27.08.2016 in I.A. No. 397 of 2013 filed by them under Order XVIII Rule 17 of the Code of Civil Procedure to recall P.Ws. 1 to 5 for the purpose of further cross-examination.

The suit was filed by the respondent-plaintiff in 2008 for recovery of Rs.13,89,972/- on the foot of a promissory note dated 05.07.1989. The main ground on which the petitioners has filed the present Application i.e. I.A.No. 397 of 2013 is that their late father had monetary transactions with Sri Yaragatulapalli Radhakumar Reddy, who was examined as P.W.2, but not with the respondent herein and the said P.W.2 had forged the suit document and made some material alterations therein. It is their further case that due to misplacement of promissory notes and part-payment vouchers, those aspects were not confronted to P.Ws.1 to 5 and hence, it necessitated now to recall and cross-examine them. After contest, the said I.A. was dismissed on the

ground of lack of *bona fides*, as there was not even a whisper in the written statement filed by the defendants in respect of the above-said transactions. Hence, the Revision.

At the outset, it is to be noted that the suit was filed in 2008, plaintiff's side evidence was over and is at the stage of cross-examination of defendants' witnesses. At this stage, the defendants had taken out the present Application to recall and cross-examine P.Ws.1 to 5. The specific plea of the petitioners-defendants is that P.W.2 had no capacity to lend such a huge sum and he had forged the suit promissory note by adding '6' before Rs.99,500/-. Even if the contention of the petitioners-defendants that there were material alterations in the suit promissory note, were to be accepted, it does not, by itself, alter either the nature of the suit or the defence of the petitioners, since it is the burden of the respondent-plaintiff to establish his case that the suit document was executed by the petitioners for such an amount. Further, the petitioners had failed to specifically take the plea of forgery or material alterations in the written statement itself and now they cannot develop their case at this stage as it is a well-settled principle that no amount of evidence would be of any use in the absence of a specific pleading.

In those circumstances, the order dated 27.08.2016 dismissing I.A.No. 397 of 2013 does not warrant any interference at the hands of this Court in exercise of the revisional jurisdiction.

The Civil Revision Petition therefore, stands dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

18th November 2016

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