

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION Nos. 927 and 928 OF 2016

COMMON ORDER:

These two revisions under Article 227 of the Constitution of India are filed by the unsuccessful petitioner/plaintiff assailing the orders made separately on 06.02.2016 by the learned XIII Additional Chief Judge-cum- Judge, Fast Track Court, City Civil Court, Hyderabad, in I.A.Nos.708 and 707 of 2013 in O.S.No.275 of 2009 filed for reopening the evidence and recalling DW1 for further cross-examination on behalf of the plaintiff.

I have heard the submissions of Sri T.P. Acharya, learned counsel for the plaintiff/revision petitioner (hereinafter referred to as 'plaintiff') and Sri Aadesh Varma, learned counsel for respondent Nos.2 to 5, 7 and 8/defendants in the suit (hereinafter referred to as 'contesting defendants') and perused material record.

The facts as stated at the hearing, in brief, are as follows:

The plaintiff filed the suit for a declaration that he alone is entitled to get the sale deed registered in his name or in the name of his nominees in respect of suit schedule property as against defendants 1 to 8 and for mandatory injunction, perpetual injunction besides costs. The contesting defendants are resisting the suit. According to the contentions of the plaintiff, when the Government allotted the suit schedule property in favour of his father, the share of amount due and payable to the 2nd defendant was paid on 20.08.2007 under a receipt of even date, which is exhibited as exhibit A9 and that on the same day the 2nd defendant also executed in favour of the wife of the plaintiff, a registered GPA bearing document No.196/IV/2007 duly registered in the office of the Sub-Registrar, Golconda. While so, when the trial is in progress, after the evidence on the side of the

plaintiff was closed, the 2nd defendant appeared as a first witness (DW1) on the side of the contesting defendants. After taking his examination in chief, the trial Court appointed an Advocate Commissioner to record his cross-examination. During the course of cross-examination, when the learned counsel for the plaintiff confronted only the signature part of exhibit A9 to the said witness, an objection was raised by the counsel for the contesting defendants that the entire document shall be shown to the witness and not a portion of it. In view of the objection raised before the learned Advocate Commissioner, the matter came up for consideration before the Court and the trial Court proceeded to record the further cross-examination of the said witness. Even the trial Court did not permit the counsel for the plaintiff to confront to the said witness only the part of the document containing the disputed signature and directed that the entire document should be shown to the witness. In the cross-examination, when the witness was shown the said document, exhibit A9, the relinquishment deed, exhibit A17, his two vakalats given to two successive advocates and other documents, he admitted the signatures on some of the documents and denied the signatures on some of the documents. It is pertinent to note that he denied the signature on one of his vakalats as well as on exhibits A9 and A17. The evidence of DW1 was closed on 09.12.2015; and, immediately thereafter, that is on 18.12.2015, the plaintiff filed the subject applications for reopening the evidence and recalling DW1 for cross-examination *inter alia* stating that the aforementioned registered GPA executed in favour of the wife of the plaintiff by 2nd defendant is with the plaintiff, but the plaintiff, though having possession of the said document, did not bring it to the notice of the counsel as it is not put to use for any purpose, and that after the cross-examination of DW1 was completed, the counsel informed the plaintiff that if a document containing the signature of DW1, which was executed prior in point of

time, is available the same would be helpful to the plaintiff, and that on that the plaintiff remembered the existence of the aforesaid GPA and brought it to the notice of the counsel and that therefore the applications are filed. It is also submitted on behalf of the plaintiff that since the document was not brought to the notice of the counsel at the time of cross-examination of DW1, the said document was not confronted to DW1 during his cross-examination. In this back drop the learned counsel for the plaintiff/revision petitioner seeks to set aside the orders of the Court below which are impugned in these revisions and prays for permission to reopen the evidence and recall DW1 for further cross-examination by the plaintiff for the purpose of confronting the said registered GPA to him.

Per contra, the learned counsel for the contesting defendants while supporting the orders of the Court below would submit that admittedly the plaintiff is having in possession of the GPA and it is not his case that he is not aware of the said document and that despite having the said document in his possession, it is not even filed into Court during the evidence of the plaintiff and that the said document was not confronted to DW1 at the earliest opportunity and that the present attempt to recall DW1 is only intended to fill up the lacunae and to improve the case of the plaintiff and that therefore the trial Court is justified in dismissing the applications of the plaintiff.

I have bestowed my attention to the facts and given detailed and thoughtful consideration.

Admittedly, the suit is filed for declaration in regard to valuable immovable property. The matter is before the trial Court and the trial has not concluded. The plaintiff has specifically contended in the plaint that towards the share of amount of the 2nd defendant, who is examined as DW1, certain amount was paid under

exhibit A9; and the said document was confronted to the said witness during his cross examination. This is not the stage to appreciate and evaluate the evidence of the said witness, as the said evidence has to be appreciated and evaluated along with other evidence at the time of adjudication of the issues, which are settled for determination in the suit. Be that as it may, the purpose of the present request of the plaintiff to recall DW1 is to confront a registered GPA said to have been executed by him in favour of plaintiff's wife. Though the said document was in possession of the plaintiff, according to him, he did not bring it to the notice of the counsel at the earliest point of time and, therefore, the counsel could not cross examine DW1 on the said document by confronting the same to the said witness. The said document being a registered document, its authenticity cannot be doubted and the contesting defendants cannot be heard to say that it was created for the purpose of the plaintiff's case or to fill up the lacunae in the evidence already brought on record. Moreover, the evidence of DW1 was closed on 09.12.2015 and the present applications were filed promptly thereafter on 18.12.2015 without any delay. Therefore, this Court is satisfied that it is in the interest of justice to permit the plaintiff to recall DW1 for cross-examination on the aspect of the said GPA, as such evidence, if permitted, brings on record one more assured piece of evidence for consideration by the trial Court at the appropriate stage either way.

On the above analysis this Court finds that the trial Court ought to have considered the request of plaintiff to reopen the evidence and recall DW1 for confronting the registered GPA said to have been executed by him in favour of the wife of the plaintiff. Viewed thus, this Court finds that there is acceptable merit in these revisions of the plaintiff and the revisions deserve to be allowed.

In the result, both the revisions are allowed and the orders impugned in these revisions are set aside and the interlocutory application Nos.708 and 707 of 2015 are allowed. The trial Court shall now fix a date for appearance of the DW1, as per its convenience and the convenience of the counsel for both the sides, and permit the plaintiff to further cross-examine DW1 on the limited aspect of the registered GPA aforementioned.

No costs.

Miscellaneous petitions, if any, shall stand closed.

Date: 15.11.2016
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M. SEETHARAMA MURTI, J

