

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.982 & 1045 of 2016

COMMON ORDER:

The revision petitioner in both the revision petitions is the 2nd defendant in O.S.No.179 of 2009 in the suit for permanent injunction on the file of II Additional District Judge, Visakhapatnam. The suit is pending along with other suits including of this revision petitioner for the efficacious relief of declaration of title and consequential relief of possession etc. When all these suits more than these 2 inter-related between the parties to the lis mainly covered to identify plaint schedule property which is situated in boarder of 2 villages, pursuant to the respective source of title claiming through predecessors in interest, the litigation has been crept in. Defendant Nos.9 & 10 are some of the vendors to the plaintiff out of their extents, the plaint schedule according to the claim of the plaintiff, who came on record on their own under Order I Rule 10 CPC and they filed written statement and Court permitted to recall of PW.1 for their cross-examination. It appears way back before the end of year 2014, the recall petition filed by the 2nd defendant to which suit for declaration of title pending in the joint trial of these cases for PW.1/plaintiff of the suit for bear injunction as referred supra is to put certain questions which they could not earlier from there are gaps in the continuation of cross-examination and also in saying after defendant Nos.9 & 10 brought on record and cross examination of PW.1, there are certain aspects that arisen to defendant No.2 herein in support of his claim and to cross examine PW.1. These petitions after contest and elaborate arguments by both sides ended in dismissal by the impugned orders dated 27.01.2016 in I.A.Nos.1642 & 1643 of 2015 before the trial Court referred supra. Those are now impugned in these revisions.

The law is fairly settled that in a suit of the plaintiff even there are different defendants raising different contest and inter se between

them even any conflict of interest, nothing therefrom operates as res judicata, to later work out their independent rights; but for to consider only the scope of the lis between the plaintiff and the defendants either plaintiff entitled to relief or not. Here it is not the only suit of the plaintiff for injunction, but also of the defendant No.2 for recovery of possession and injunction in joint trial along with other suits.

It is needless to say the procedural law is hand made and not mistress of justice. The very object of trial by directing the parties to present their pleadings and settlement of issues to decide controversy pursuant thereto by permitting to adduce evidence is to arrive at the truth out of the vogue of trial. In that course, technicalities thereby cannot be given importance and the procedure by following due process of law or rules of evidence is the basic principle in saying procedural law is hand made of justice. In fact on the scope of Order 18 Rule 17 CPC the latest expression of the Apex Court in **Ram Rati Vs. Mange Ram (D) thr. LRs. And Others**^[1] at Para 11 which no doubt referred the earlier expression of the Apex Court in **K.K. Velusamy Vs. N.Palanisamy**^[2] (which is suit for specific performance of contract for sale) that, the power even to exercise besides the specific rule is to make orders for ends of justice or prevent abuse of process. Further coming to the provisions in Order 18 Rule 17 CPC the basic purpose postulated is to enable the Court to clarify any position or doubt and the Court may either suo motu or on the request of the party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt once the Court recalls the witness for the purpose of any such clarification, the Court may permit the parties to assist the Court by examining the witness for said purpose of clarification required or permitted by the Court. The power cannot be stretched any further. The power cannot be invoked to fill up the gaps and prejudice caused or not to a party by such a power, thereby a ground for consideration in exercise of the discretion.

From this, the law is very clear on the scope of Order 18 Rule 17 CPC, as to the power of the Court to permit any party to call for any witness to put any questions where the Court felt necessity. For that to decide by Court of such necessity the affidavit is supposed to demonstrate what are the questions to be put. However, had it been stated in the affidavit it gives pre-indication to the opposite party to alert to avoid answers conveniently by preparation. The law is uncertain in this regard. Once not disclosed the question or area of questions on relevancy, the Court could not understand and once disclosed the other party being alerted to avoid answers. In view of this, the proper recourse that can be adopted by Court is asking the party to give in seal cover, what are the questions to be put to consider the relevancy or not therefrom to invoke the power or not. The trial Court did not do so. The respondents in seeking dismissal of the revision contends that the affidavit is laconic as to what are the relevant questions to be put that supposed to mention, apart from impleadment of new parties and their defence no way improve their case to recall PW.1 though otherwise could have been asked before PW.1 recalled and cross examined at instance of Court by defendant Nos.9 and 10.

Accordingly and in the result, both the revision petitions are disposed of instead of dismissing the petition and giving liberty to file another application before the trial Court, to sub serve the ends of justice, by directing the revision petitioner to give in a seal cover to the trial Court within one week from date of receipt of this order as to what are the relevant questions or area of the further examination, so that the trial Court can consider therefrom any necessity to recall. Failing which, the 2nd defendant/revision petitioner is not entitled to seek extension of time or to file another application and the order of lower Court therefrom holds good without any further reference to this Court.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 08.08.2016
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[\[1\]](#) 2016 (3) ALD 162 (SC)
[\[2\]](#) (2011) 11 SCC 275