THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petitions Nos.3642 and 3792 of 2015

COMMON ORDER:

These two revision petitions under Article 227 of the Constitution of India filed by the respondent-plaintiff are directed against the orders dated 06.08.2015 of the learned II Additional Junior Civil Judge, Ranga Reddy District at L.B. Nagar, passed in I.A.Nos.611 and 610 of 2015 in OS.no.9 of 2012 respectively filed by the petitioner-defendant for reopening the evidence and for summoning the Assistant Director of Survey and Land Records, Ranga Reddy District, to produce file No.K3/641/2009 and give evidence.

2. I have heard the submissions of Sri Hari Sreedhar, leaned counsel appearing for the revision petitioner-plaintiff and of Sri K. Raghuveer Reddy, learned counsel for the respondent-defendant. I have perused he material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendant for convenience and clarity.

4. The case of the defendant in support of the two requests in the two applications, in brief, is as follows:

The plaintiff brought the suit against the defendant for a perpetual injunction in respect of lands in Sy.Nos.171 and 179 of Boduppal village of Ghatkesar Mandal. This defendant is the owner and possessor of land in Sy.no.152 of Uppal Bhagat Village of Uppal Mandal. The suit is coming up for hearing arguments. During the course of evidence of the defendant, the report of the Assistant Director of Survey and Land Records, Ranga Reddy District, was marked as exhibit B10. The plaintiff is contending that the said exhibit B10 is not genuine and was a created one. To prove the genuineness of the said exhibit B10 it is necessary to summon the Assistant Director of Survey and Land Records, Ranga Reddy District, to produce the relevant file and give evidence.

The evidence of the said witness is crucial and material for the purpose of adjudication of the issues involved in the suit. The defendant therefore intends to examine the said witness on his side. Therefore, it is necessary to reopen the matter and summon the witness for the desired purpose. If the permissions as sought for are not granted to the defendant, the defendant suffers serious and irreparable loss.

5. The case of the plaintiff in his counter, in brief, is as follows:

The material allegations filed in support of the petitions are false. The evidence on the side of the defendant was closed long time back and the suit is posted for arguments. On 16.07.2015, learned counsel for the plaintiff advanced arguments and the suit was posted to 23.07.2015 for hearing arguments on the side of the defendant, at the request of his counsel. On that day, further time was sought and therefore the suit was adjourned to 30.07.2015. At that advanced stage, the present petitions are filed to fill up the gaps and lacunae in the case of the defendant. If the matter is reopened and the defendant is permitted to summon the witness, the said course causes serious prejudice to the plaintiff as arguments were already advanced on his side in the suit and the suit is coming up for hearing arguments on the side of the defendant. There is no basis in the pleadings of the defendant with regard to the evidence that is being sought to be introduced by calling the Assistant Director of Survey and Land Records as a witness. Hence the petitions may be dismissed.

6. The trial Court by separate orders made on the same day allowed both the applications. Aggrieved of the said orders the plaintiff is before this Court.

7. The plaintiff filed the suit for a perpetual injunction in respect of Ac.0.16 guntas of land in S.No.179 by giving the boundaries of the said property as follows: - NORTH: way to peerzadiguda and land in Sy.no.178 of petitioners land; SOUTH: Govt land in Sy.no.181; EAST: way to peerzadiguda and land in Sy.no.178 of petitioners land; WEST: Petitioners land in Sy.no.182 of Boduppal.

The defendant is resisting the suit, *inter alia,* contending that he is the owner and possessor of Ac.1.26 guntas of land in Sy.no.152 of Uppal Bhagat Village of Uppal Mandal and that the present suit of the plaintiff is a counter blast to OS.no.1028 of 2008 on the file of the Court of the learned II Additional Senior Civil Judge, Ranga Reddy District which was filed by him against Yogayya Naidu, the father of the plaintiff, when he tried to interfere with the peaceful possession and enjoyment of the above said land of the defendant and that the plaintiff under the guise of claiming the plaint schedule property is trying to grab the property of the defendant in Sy.no.152 and that the defendant is a poor farmer owning small extent of land.

8. At the hearing of these revisions, learned counsel for the plaintiff while reiterating the contentions of the plaintiff in the counter and while emphasising that the suit is at the stage of arguments and that the arguments on the side of the plaintiff were already advanced and that these petitions are filed belatedly to fill up the gaps and lacunae in the case of the defendant vehemently contended as follows: -'There is only one village viz., Boduppal village. The defendant is falsely claiming that his land is in Uppal Bhagat village. Therefore, the plaintiff filed the village map; the same was already exhibited and it supports the contention of the plaintiff. Exhibit B10 map, which is prepared by a Surveyor in connection with some other proceedings, and in the absence of parties to the present *lis,* is of no avail to the defendant. The said map is not genuine. Though the said exhibit B10 was marked and its genuineness was disputed by the plaintiff, the defendant did not take steps to prove its genuineness at the earliest opportunity. Exhibit B10 showing the situation of land in Sy.no.152 in Uppal Bhagat village is not a genuine plan. The suit is one for perpetual injunction. Therefore, the trial Court ought to have dismissed both the petitions filed by the defendant.'

He placed reliance on the decision of the Supreme Court in Ram Rati v. Mange Ram (D) through LRs and others[1].

9. Learned counsel for the defendant while reiterating the contentions of the defendant, which are stated supra, and while supporting the orders of the Court below drew the attention of this Court to exhibit B10 map and stated that in between Sy.Nos.179 and 178 the land in Sy.no.152 is situate and that the Northern boundary of the land in Sy.no.179 is partly Sy.no.152 but the plaintiff in the plaint schedule has wrongly shown the Northern boundary as 'way to peerzadiguda and land in Sy.no.178' and therefore exhibit B10 assumes importance. He further contends that in view of the fact that the plaintiff is contending that it is not a genuine document though it is counter signed and attested by the Assistant Director of Survey and Land Records, Ranga Reddy District, the defendant is constrained to summon the said witness to produce the original file and give evidence before the Court only to help the Court to arrive at a just decision and effectively adjudicate the *lis* as one of the contentions of the defendant is that the plaintiff by showing wrong boundaries is including the defendant's land also in his land, that is, the plaint schedule property, only to grab the property of the defendant, who is a poor farmer whereas the plaintiff and his father are influential persons.

10. I have given detailed and thoughtful consideration to the facts and submissions. The suit is filed only for a perpetual injunction. The crucial issue is as to whether or not the plaint schedule boundaries are correctly shown and whether or not while showing incorrect boundaries the plaintiff is trying to grab the defendant's land which is in Sy.no.152 as being contended by the defendant. The plaintiff filed village map whereas the defendant filed a surveyor's map, which was prepared by Inspector of Survey and was counter signed by the Assistant Director, Survey and Land Records, Ranga Reddy District, while issuing it in response to the request of the defendant made under the provisions of Right to Information Act. In-fact, the defendant having

[1] 2016 (9) SCJ 69

obtained exhibit B10 plan marked it in his evidence. If the village map and exhibit B10 are examined in juxtaposition, there arises a serious doubt as to situation of the dry lands and their topographical details on land/on ground. Though the plaintiff contends that exhibit B10 is not a genuine map, it was duly attested by the Assistant Director of Survey and Land Records, Ranga Reddy District. Though the plaintiff further contends that the present attempt of the defendant is to fill up the lacunae and cover up the laches in his case, it is to be noted that the defendant is not requesting to recall either himself or any witness already examined. He is only requesting the trial Court to summon a Public Officer namely Assistant Director of Survey and Land Records to prove the genuineness or otherwise of exhibit B10 by producing the original file available in his office. The said witness, in all probability, is expected to give evidence as per public record being a responsible Government Officer concerned with survey and land records. In all likelihood, he will not either support the plaintiff or the defendant out of the way. He would only speak and give evidence as per record in an independent manner. Therefore, this Court finds that though the attempt on the part of the defendant to summon the witness who is said to be a crucial witness is made at a belated stage, the defendant cannot be denied the relief, as in the considered view of this Court, calling such an important witness who is a public officer would help in placing on record the best possible evidence and would also help the Court in effectively adjudicating the *lis*. In-fact, when the defendant raised a contest that the plaintiff under the guise of the plaint schedule property is trying to grab his property, the trial Court ought to have considered the request of the defendant to appoint an advocate commissioner to localise the property but it was not done. Be that as it may.

11. Coming to the decision in Ram Rati (supra) relied upon by the learned counsel for the plaintiff, a plain reading of the decision would show that the Supreme Court in the cited case considered the question - 'whether a witness can be recalled under Order 18 Rule 17 of the Code of Civil Procedure, 1908 for

further elaboration of aspects left out in evidence already closed? and held as follows:

> 'The rigour under Rule 17, however, does not affect the inherent powers of the court to pass the required orders for ends of justice to reopen the evidence for the purpose of further examination or cross-examination or even for production of fresh evidence. This power can also be exercised at any stage of the suit, even after closure of evidence. Thus, the inherent power is the only recourse, as held by this Court in K.K. Velusamy (supra) at paragraph-11, which reads as follows:
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> "11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications."

The Supreme Court also referred to the decision in K.K.Veluswamy v. N. Palanisamy [2011(4) SCJ 48] wherein it was held as follows:

> "14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose."

The Supreme Court also noted that the decision in K.K. Veluswamy found affirmation of the Supreme Court in Bagai Construction through its Proprietor Lalit Bagai v. Gupta Building Material Store [2013(2) SCJ 754].

Thus, the Supreme Court reiterated the settled legal position that the rigour under Rule 17 however does not affect the inherent powers of the court to pass the required orders for ends of justice to reopen the evidence for the purpose of further examination or cross examination or even for production of fresh evidence and that this power can also be exercised at any stage of suit,

even after closure of evidence. Therefore, the decision cited is more helpful to the defendant. Be that as it may.

12. In the case on hand, as already noted, the ground urged by the plaintiff that the present attempt is intended to fill up the lacunae or gaps in the defendant's case cannot be countenanced as the witness being sought to be summoned is a public officer and he is supposed to give evidence on oath based on records in an independent manner. Further, if he produces the original record/file from his office including the plan corresponding to exhibit B10, even if exhibit B10 is to be kept out of consideration for any reason, the evidence he is likely to give and the record he is likely to produce would be of significant help and assistance to the trial Court in effectively adjudicating the *lis*.

13. Viewed thus, this court finds that there is no merit in the revisions and the revisions are liable to be dismissed.

14. In the result, the Civil Revision Petitions are dismissed confirming the orders of the trial Court.

Miscellaneous petitions, pending if any, in these revisions shall stand closed. There shall be no order as to costs.

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M. SEETHARAMA MURTI, J

14th December, 2016
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