

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. Nos.1906 and 1949 OF 2016

COMMON ORDER:

These two Revisions arise out of the same suit between the same parties. Therefore, they are being disposed of by this common order.

2. Petitioner in both these Revisions is plaintiff in O.S.No.75 of 2006 on the file of Junior Civil Judge, Chintalapudi. The said suit was filed by the 1st respondent against the petitioner and other respondents for specific performance of agreements of sale dt.10.05.1988 and dt.25.05.1988

3. Written statement was filed by the petitioner and respondents 2 to 7 denying that the said agreements of sale were executed by respondents 2 to 4 in favour of the 1st respondent.

4. It is not disputed that the 1st respondent is the brother of respondents 2 and 3.

5. Issues were framed, trial commenced. The 2nd defendant, who was examined as DW2, denied the execution of agreement of sale in favour of the 1st respondent. On 24.06.2011, he was cross-examined by the petitioner's counsel on the question whether he was a signatory or not to the agreement of sale in the presence of 1st respondent and his advocate. The evidence of defendants was closed on 04.08.2011 and the matter was posted for arguments on 17.08.2011.

6. On 30.09.2011, the 1st respondent filed I.A.No.430 of 2011 to reopen the suit and I.A.No.431 of 2011 to recall DW2 contending that though the matter was posted for arguments, he could not effectively instruct his advocate to cross-examine DW2 on the question whether DW2 was a signatory or not.

7. Both these applications were dismissed on 30.12.2011.

8. Thereafter, the following events occurred:

19.01.2012	Suit posted for arguments
13.02.2012	Plaintiff submitted arguments.
16.02.2012	Defendants submitted arguments and suit is reserved for Judgment
30.04.2012	I.A.No.113 of 2012 filed by plaintiff to re-open the suit for submission of further arguments
04.05.2012	I.A.No.113 of 2012 was allowed and the suit was re-opened for further arguments on behalf of plaintiff and posted to 18.06.2012
18.06.2012	At request for arguments suit is posted to 21.06.2012
21.06.2012	At request for arguments suit is posted to 10.07.2012
10.07.2012	At request for arguments suit is posted to 16.07.2012
16.07.2012	PO is on CL posted 23.07.2012
23.07.2012	BNR for arguments at request suit is posted to 31.07.2012
31.07.2012	BNR for arguments at request suit is posted to 07.08.2012
07.08.2012	For arguments at request of both sides posted to 22.08.2012
22.08.2012	For arguments at request posted to 28.08.2012
28.08.2012	PNR for arguments at request posted to 03.09.2012
03.09.2012	BNR for arguments at request posted to 10.09.2012
10.09.2012	For arguments at request posted to 21.09.2012
21.09.2012	At request for arguments finally posted to 26.09.2012
26.09.2012	For arguments at request posted to 04.10.2012
04.10.2012	For arguments at request posted to 09.10.2012
09.10.2012	Heard arguments of plaintiff in part and further arguments posted to 16.10.2012
16.10.2012	At request finally for arguments posted to 19.10.2012
19.10.2012	Petition filed on behalf of plaintiff seeking adjournment in view counsels personal inconvenience hence considering the same, and the defendants are reports not ready hence for arguments posted to 01.11.2012
01.11.2012	BNR for arguments finally call on 16.11.2012
16.11.2012	BNR for arguments at request finally call on 28.11.2012
28.11.2012	BNR finally for arguments no further time will granted posted to 12.12.2012
12.12.2012	Heard arguments in part for further arguments posted to 19.12.2012
19.12.2012	Heard arguments on behalf of plaintiff, for hearing arguments of defendants call on 26.12.2012
26.12.2012	PO is on OH posted to 02.01.2013
02.01.2013	For arguments of defendants at request posted to 04.01.2013
04.01.2013	Heard Arguments of defendants 1 to 3 & 5 and for arguments of D7 and for reply arguments at request posted 05.02.2013.

9. On 05.02.2013, after dismissal of the I.A.No.430 of 2011 and I.A.No.431 of 2011 filed by the 1st respondent, the 1st respondent filed I.A.No.26 of 2013 to reopen the suit and I.A.No.27 of 2013 to recall PW1.

10. In the affidavit filed in support of I.A.No.26 of 2013 he contended

that DW2 had taken a plea that he was not the person who fixed the signature and that he only puts thumb impression on the documents, but certain registered sale deeds had been executed by 2nd defendant(DW2) wherein he had signed and therefore the plea of the 2nd defendant that he does not know how to sign and that he puts his thumb impression, is false. He contended that at the time when DW2 was cross-examined he could not produce these documents, since he had lost sight of them, as they were executed long back; that in order to prove and establish that DW2 normally signs on documents, and he had given false evidence that he was not in the habit of signing the documents and was only putting his thumb impressions, the suit must be reopened for his further evidence and PW1 must be recalled for marking these documents.

11. Counter affidavit was filed by the petitioner opposing these applications and contending that the matter had underwent several adjournments enabling the parties to address arguments, after I.A.No.430 of 2011 and 431 of 2011 filed by the 1st respondent were dismissed; that in the cross-examination of DW2 by the 7th defendant's counsel, he was already questioned as to whether he was a signatory or a marksman on 24.06.2011 in the presence of the 1st respondent and his advocate; and therefore at this point of time, these applications cannot be allowed.

12. By order dt.23.02.2016 the Court below allowed both the applications on the ground that it is in the interest of justice to allow 1st respondent to lead further evidence and to mark these documents by recalling him as PW1. It also observed that no prejudice would be caused to the petitioner and other respondents if the matter is reopened and those documents are marked.

13. Challenging the same, these Revisions are filed.

14. Counsel for the petitioner contended that DW2 had stated in his evidence that he had not executed the suit agreement of sale; that he was cross-examined by 7th defendant on 24.06.2011 as to whether he is a signatory or a marksman and that this was done in the presence of 1st respondent. He contends that when the 1st respondent sought to reopen the suit by filing I.A.No.430 of 2011 and 431 of 2011 to recall DW2 to question him on the issue whether he is a signatory or marksman, those applications were dismissed on 30.12.2011; thereafter several times the matter had been posted for arguments; and belatedly, after more than 20 adjournments, the present applications have been filed. He contended that grave prejudice would be caused to the petitioner and other respondents if the orders passed by the Court below are allowed to stand and that the 1st respondent, who had acted with negligence and laches, cannot plead that it is in the interest of justice to allow him to reopen the suit and lead further evidence.

15. Sri Naram Nageshwar Rao, Counsel for 1st respondent refuted the above submissions and supported the orders passed by the Court below. He however did not dispute that there was a clear denial of the execution of the agreement of sale in the written statement filed by the defendant or the fact that during the cross-examination of DW2 on 24.06.2011 by 7th defendant, he was questioned on the aspect whether 2nd defendant was signatory or a marksman to documents or that this cross-examination took place in the presence of 1st respondent and his advocate. He also did not dispute that I.A.Nos.430 and 431 of 2011 filed by the plaintiff to reopen the suit and recall DW2 to question DW2 on the issue whether he is a signatory or marksman came to be dismissed on 30.12.2011.

16. I have noted the submissions of both sides.

17. The matter appears to have been undergone at least 20 adjournments for submission of arguments by the parties and more than a year after the said order of 30.12.2011 was passed in I.A.Nos.430 and 431 of 2011, the present I.A.Nos.26 and 27 of 2013 were filed. It is clear that the 1st respondent and his counsel were both negligent in not filing these applications immediately after the evidence of DW2 was closed on 04.08.2011 or at least after I.A.Nos.430 and 431 of 2011 were dismissed on merits on 30.12.2011. These laches on the part of the 1st respondent and his counsel disentitle them for any relief in I.A.Nos.26 and 27 of 2013.

18. In my considered opinion the Court below overlooked this conduct of the 1st respondent and his counsel and the fact that allowing these applications, one year after the suit was posted for arguments, casts grave prejudice to the petitioner as well as to the other respondents 2 to 4. Therefore, the Court below has not properly exercised the jurisdiction vested in it.

19. Accordingly, both these Civil Revision Petitions are allowed; the common order dt.23.02.2016 in I.A.Nos.26 and 27 of 2013 in O.S.No.75 of 2006 of the Junior Civil Judge, Chintalapudi, West Godavari District, is set aside. There shall be no order as to costs.

20. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

24th June, 2016.

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