

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition Nos.4345 & 5227 of 2015

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COMMON ORDER:

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These two revision petitions by the unsuccessful plaintiff/respondent are filed assailing the orders dated 30.07.2015 passed by the learned X Additional District Judge, Visakhapatnam at Anakapalle in IA.nos.489 of 2015 and 490 of 2015 in OS.no.185 of 2007 filed respectively for reopening the evidence on the side of the plaintiff; and, recalling of plaintiff/PW1 for further cross-examination by the 1st defendant.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the 1st respondent/1st defendant. The respondents 2 to 5 are stated to be not necessary parties. I have perused the material record.

3. Since these two revision petitions arise out of the orders passed in the connected interlocutory applications aforementioned, both the revisions are being disposed of by these common orders.

4. The plaintiff brought a suit for declaration that she is the only surviving Class-I legal heir of her parents Nanepalli Venkata Ramana and Laxmi Ramana and for a consequential relief of perpetual injunction restraining the 1st defendant and his men etcetera from interfering with her peaceful possession and enjoyment of the plaint schedule property. The 1st defendant, who is resisting the said suit, after the closure of the evidence and when the suit is at the stage of arguments, had filed the subject IAs to reopen the evidence and recall PW1 for further cross-examination by the 1st defendant. The said applications were resisted by the plaintiff. On merits, the trial Court had allowed both the applications by passing separate orders, which are impugned in these revision petitions.

5. The case of the 1st defendant in support of the request to reopen the evidence and recall PW1, in brief, is this:

The suit is filed by the plaintiff for declaration contending that she is the natural daughter of her parents N. Venkata Ramana and Laxmi Ramana. The plaintiff is only a fostered daughter, but not a natural daughter. The plaintiff was examined as PW1; and, further got examined her supporting witnesses. When the matter is coming for further evidence of the 1st defendant, the necessity for filing of the subject IAs has arisen as the 1st defendant could not give important information to his counsel at the time of cross-examination of PW1 and as by inadvertence his counsel could not cross-examine PW1 on some material and important aspects. As per the contention of the 1st defendant, the plaintiff is not the natural daughter of her alleged parents and that, therefore, it is necessary to recall PW1 and cross-examine her on these aspects.

6. The defence in the counter of the plaintiff is that the affidavits filed in support of the two petitions do not contain material details and that the averments therein are vague and that the present attempt to recall PW1 for further cross examination is only intended to fill up the lacunae in the evidence and that the petitions are intended to protract the litigation and that the petitions filed at the stage of arguments are not maintainable and are liable to be dismissed.

7. The learned counsel for both the sides advanced arguments in line with the contentions, which are stated supra.

8. I have gone through the orders of the Court below whereby while exercising the discretion, the Court below had granted the requests of the 1st defendant and allowed both the petitions. The contention of the learned counsel for the plaintiff in both these revisions is only a reiteration of the contentions in the counter of the plaintiff filed in the aforesaid IAs. He mainly affirmed that the reasons for recalling PW1 were not mentioned in the affidavits and that the Court below was in error in allowing the applications

merely on the ground that if the witness is recalled after reopening the evidence, no prejudice would be caused. He placed reliance on a decision of the Supreme Court in **Vadiraj Naggappa Vernekar (deceased by LRs) v. Sharad Chand Prabhakar Gogate**^[1] in support of the contention that the power to recall a witness exercisable under Order XVIII Rule 17 shall be exercised sparingly and in appropriate cases and not as a general rule and that merely on the ground that a recall and re-examination of a witness would not cause any prejudice to the parties, no such application shall be allowed and that such power also shall not be invoked to give an opportunity to the party to fill up lacunae in evidence of the witness which has already been recorded. The learned counsel for the 1st defendant, while supporting the orders impugned in these revisions, would contend, by placing reliance on the decision of the Supreme Court in **K.K. Velusamy v. N. Palanisamy**^[2], that the power under Section 151 of the Code can be exercised to deal with any particular procedural aspect which is not provided expressly or impliedly in the Code, if ends of justice so warrant and to prevent abuse of process of Court and that a Court in appropriate cases can exercise its discretion to permit reopening of evidence and/or recalling of witness for further examination/cross-examination after evidence led by parties is concluded and arguments have commenced or even when arguments have concluded and case has been reserved for judgment, as there is no provision in that regard in the Code after deletion of Order 18 Rule 17A of the Code.

9. I have bestowed my attention to the submissions and given earnest consideration to the ratios in the decisions. The core issue before the Court below is as to whether the plaintiff is the natural daughter or fostered daughter of N. Venkata Ramana and Laxmi Ramana. As rightly contended by the learned counsel for the 1st defendant, the aspects on which the witness is to be cross-examined need not be disclosed in the affidavit filed for recalling the witness, in detail, as disclosing of such information would make the intended cross-examination a futile exercise. As the trial Court was of the view that the evidence on re-examination of the witness/PW1 has a bearing

on the ultimate decision of the suit, it had exercised the discretion and permitted recall of PW1 for further cross examination by the 1st defendant.

10. Viewed thus, this Court finds that there is no jurisdictional error committed by the Court below calling for interference.

11. In the result, both the Civil Revision Petitions are dismissed. The trial Court is directed to fix a date, convenient to both the parties and the Court, within 15 days from the date of the receipt of a copy of this common order, for appearance of PW1 for cross-examination and expeditiously complete the recording of the cross-examination of PW1 and dispose of the suit as expeditiously as possible. There shall be no order as to costs.

Miscellaneous petitions, pending if any, in these CRPs also shall stand closed.

JUSTICE M. SEETHARAMA MURTI

08th March 2016
Vjl

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[\[1\]](#) AIR 2009 SC 1604

[\[2\]](#) (2011) 11 SCC 275