

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2226 OF 2016

ORDER

This Civil Revision Petition under Article 227 of the Constitution arises out of the order dated 12.02.2016 passed by the learned Special Sessions Judge for Trial of Cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-VII Additional District and Sessions Judge, Ranga Reddy District, in I.A.No.2316 of 2015 in O.S.No.805 of 2011. The petitioner is the 1st defendant in the said partition suit. He filed the subject I.A. under Order 18 Rule 17 CPC seeking recall of P.W.1 for further cross-examination by reopening his evidence. By the order under revision, the trial Court dismissed his application.

While ordering notice before admission on 03.06.2016, this Court took note of the fact that the trial Court had disallowed the plea of the petitioner/1st defendant for reopening the evidence of P.W.1 for further cross-examination at the stage of P.W.2's chief-examination and that the trial Court seemed to have some time constraint owing to a direction given by this Court to dispose of the matter within a month. The Registry was therefore asked to secure the file relating to the subject suit for verification of this aspect. All further proceedings in the suit were stayed.

The 1st respondent/plaintiff filed C.R.P.M.P.No.3805 of 2016 to vacate the said order.

Heard Sri Y.Krishna Mohan Rao, learned counsel for the petitioner/1st defendant, and Sri Junaid Ali Qureshi, learned counsel for the 1st respondent/plaintiff.

Perusal of the order under revision reflects that the petitioner/1st defendant had filed two IAs., viz., I.A.No.2315 of 2015 under Section 151 CPC to reopen the evidence of P.W.1 for further cross-examination and I.A.No.2316 of 2015 under Order 18 Rule 17 CPC to recall P.W.1 for

further cross-examination. Surprisingly, the petitioner/1st defendant chose to file the present CRP against the common order passed in both IAs., but only to the extent it relates to I.A.No.2316 of 2015. The dismissal of I.A.No.2315 of 2015 is not subjected to challenge. Be that as it may.

The affidavit filed in support of I.A.No.2316 of 2015 reads to the effect that the earlier counsel of the petitioner/1st defendant had failed to cross-examine P.W.1 on all the points raised in the written statement and the petitioner/1st defendant had therefore changed his counsel and wanted to further cross-examine P.W.1. The affidavit also reflects that the evidence affidavit of P.W.1 was filed on 22.10.2013 and Exs.A.1 to A.5 were marked by him on 10.02.2014. On 01.07.2014, P.W.1 was cross-examined by the learned counsel for the petitioner/1st defendant. The evidence-in-chief affidavit of P.W.2 was filed on 18.07.2014 and the case was coming up for his cross-examination by the petitioner/1st defendant. At that stage, the subject IAs were filed.

Reliance was placed by the trial Court on the law laid down by the Supreme Court in **VADIRAJ NAGGAPPA VERNEKAR V/s. SHARDCHANDRA PRABHAKAR GOGATE**^[1] to the effect that the power to recall and examine a witness should be exercised sparingly and not as a general rule. The trial Court found that there was no ambiguity in the examination/cross-examination of P.W.1 warranting his recall for further cross-examination. The trial Court therefore held that the petitioner/1st defendant was not entitled to start the case afresh only because he had changed his counsel and that in any event, the burden was upon the 1st respondent/plaintiff to establish his claim for partition.

Sri Y.Krishna Mohan Rao, learned counsel, would however contend that it was not merely because of the change of counsel that his client sought further cross-examination of P.W.1. According to him, certain crucial aspects raised in the written statement had not been put to the P.W.1 and therefore, the trial Court ought not to have dismissed the plea of his client for such further cross-examination.

Sri Junaid Ali Qureshi, learned counsel, would however point out that P.W.2 was cross-examined by the petitioner/1st defendant on 21.03.2016, where upon the plaintiff's evidence stood closed, and the evidence of D.Ws.1 and 2 was also recorded in full in April, 2016. Learned counsel would state that the petitioner/1st defendant, being D.W.3, filed his affidavit in lieu of chief-examination in June, 2016, and applied for his cross-examination being carried out at his residence through an Advocate Commissioner. It was at this stage, *per* the learned counsel, that the present revision was filed to reopen the issue by recalling P.W.1 for further cross-examination.

These factual aspects are not disputed by Sri Y.Krishna Mohan Rao, learned counsel, but he would assert that the trial Court is rushing the case owing to the time constraint fixed by this Court.

The case record having been obtained by the Registry, the same was scrutinized and this Court found that upon a complaint made by the 2nd respondent/2nd defendant, an order was passed on the administrative side to dispose of the subject suit within one month. This Court is however of the opinion that the trial Court ought not to be placed in such a position where it would have to expedite every stage of the case, including the trial, giving scope for miscarriage of justice. The trial Court is therefore released from the time constraint fixed by this Court on the administrative side and it shall deal with the matter on merits and in accordance with law at its own pace.

Given the complaint of Sri Y.Krishna Mohan Rao, learned counsel, that the petitioner/1st defendant would stand to suffer owing to the lacuna in the cross-examination of P.W.1 by his earlier counsel, the written statement and cross-examination of P.W.1 were examined. This Court however finds that the cross-examination of P.W.1 sufficiently covered all the crucial aspects raised in the written statement filed by the petitioner/1st defendant. In any event, as the petitioner/1st defendant is now to be cross-examined as D.W.3 and has already filed his affidavit in

lieu of chief-examination, all issues raised in his written statement would be adverted to by him in his oral evidence and all such aspects can be brought out by him with lucidity and clarity.

Further, the affidavit filed in support of the subject I.A. does not even disclose the particulars of the alleged lapses on the part of the earlier counsel in the cross-examination of P.W.1. A bald averment that the earlier counsel failed to cross-examine P.W.1 on all the points raised in the written statement which are very crucial and go to the very root of the case is wholly insufficient to permit recalling P.W.1 for further cross-examination. This Court therefore finds no error in the order passed by the trial Court disallowing this attempt on the part of the petitioner/1st defendant.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Interim order dated 03.06.2016 shall stand vacated. The trial Court shall however be mindful of the fact that it no longer has to dispose of the suit within the time frame fixed by this Court on the administrative side and it is at liberty to proceed with the suit and adjudicate the same on merits and in accordance with law at its own pace.

Office is directed to forthwith return the entire file relating to O.S.No.805 of 2011 to the Court of the learned Special Sessions Judge for Trial of Cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-VII Additional District and Sessions Judge, Ranga Reddy District.

Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

11th JULY, 2016

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[\[1\]](#) 2009(3) ALT 25 (SC) = (2009) 4 SCC 410