

HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 3030 OF 2016

ORDER:

This revision is filed by the defendant in O.S.No.102 of 2006 assailing the order, dated 01.04.2006, in I.A.No.220 of 2016 in O.S.No.102 of 2006 passed by the learned Junior Civil Judge, Kalyandurg, Anantapur District.

Heard Sri Kothapalli Ram Mohan Chowdary, learned counsel for the petitioner. None for the respondents.

The respondents herein instituted O.S.No.102 of 2006 against the petitioner herein for declaration of title and recovery of possession. The defendant/petitioner filed a written statement. In the said suit, the petitioner herein filed I.A.No.220 of 2016 under the provisions of Order 18 Rule 17 of the Code of Civil Procedure, praying the Court to recall him (DW.1) for further evidence. The plaintiffs/respondents filed a counter, resisting the said application. The learned Junior Civil Judge, by way of an order, dated 01.04.2016, dismissed the said application. The said order is under challenge in the present revision.

It is contended by the learned counsel for the petitioner that the questioned order is erroneous, contrary to law and opposed to very object of Order 18 Rule 17 C.P.C. It is the submission of the learned counsel that the Court below did not properly appreciate the material available on record nor considered the averments in the affidavit filed in support of the application. It is his further submission that the Court below ought to have given an opportunity to the petitioner to adduce evidence, as the same would not cause any prejudice to the plaintiffs.

In the above background, now the issue that arises for consideration of this Court is:

“ Whether the Court below is justified in dismissing the application by way of the impugned order or whether the same requires any correction by this Court?”

The material available before this Court manifestly discloses that during the course of trial, PWs.1 and 2 were examined on behalf of the plaintiffs and DWs.1 to 4 were examined on behalf of the defendant when the matter was coming up for further evidence on behalf of the defendant, the present application was filed.

In the affidavit filed in support of the present application it is stated that in chief-examination the petitioner could not adduce evidence on important and material aspects, as he was suffering from fever, confusion and loss of memory. It is further stated that the plaintiffs have denied execution of Exs.B1 and B2 and their genuineness and as such the application is filed to recall DW.1 i.e., the petitioner to give evidence regarding Exs.B1 and B2 and possession over the suit schedule property. In fact, the plaintiffs/respondents herein resisted the application filed by the petitioner by way of filing counter, inter alia, stating that the petitioner cannot be recalled to give further evidence to fill up the lacuna and gaps in the evidence already let in and the application is filed at a belated stage to prolong the matter and to harass the plaintiffs.

A perusal of the order under challenge merely discloses that the learned Judge has taken into consideration the aspect that the chief-examination affidavit runs into five pages and the cross-examination running into nine pages and also taken note of the aspect that it is a case of 2006 and both sides adduced evidence sufficiently and held that in order to fill up the lacuna in the evidence already let in, DW.1 cannot be recalled and ultimately held that there are no merits in the petition.

A copy of the affidavit filed in lieu of chief-examination is filed before this Court as a material paper, wherein at paragraph 4 it is stated that the petitioner herein stated about Exs.B1 and B2. It is settled law that for the purpose of filling up the lacuna a witness cannot be recalled. It is also a settled law that unless the order impugned suffers from patent perversity, invocation of revisional jurisdiction of this Court is impermissible. In fact, in support of his submissions, the learned counsel for the petitioner placed reliance on the judgments of this Court reported in **Sreedhar Finance, rep., by its Managing Partner, Ch.Brahma Rao vs. Jurra Lingayya and another¹** and **Nallapati Balaramaiah vs. Manugoti Sri Lakshmi²**.

Having regard to the facts and circumstances of the case and the reasons recorded by the learned Junior Civil Judge, Kalyandurg, Anantapur District, the above judgments cited by the learned counsel for the petitioner would not render any assistance to the petitioner.

Accordingly, the civil revision petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, shall also stand dismissed.

A.V. SESA SAI, J

Date: 02.09.2016
ES

¹ 1996 (2) ALT 979

² 2013 (1) ALD 122