

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.2962 & 3103 of 2016

COMMON ORDER:

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

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

3. Petitioner is the plaintiff in the suit. He filed the said suit seeking perpetual injunction against the respondents to restrain them from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property. Written Statement was filed disputing the suit claim by the respondents. Issues were settled on 12-06-2014 and trial commenced on 15-07-2014. On 05-05-2015, the petitioner's side evidence was closed and the respondents' side evidence was closed on 07-01-2016.

4. Thereafter, petitioner filed I.A.Nos.64 and 65 of 2016 to reopen his side evidence and to recall P.W.2 for cross examination. Even though the suit had been posted for arguments on 22-01-2016, these applications were allowed. The evidence on the side of the petitioner was reopened. P.W.2 was recalled and further cross examined. Thereafter case was again posted for

arguments.

5. Again the petitioner filed I.A.No.159 of 2016 to reopen the suit for filing further chief examination of the petitioner and for filing the evidence of P.W.3. He also filed I.A.No.160 of 2016 under Order 8 Rule1-3A CPC to receive certain documents.

6. In the affidavit filed in support of these applications, the petitioner contended that at the time of leading evidence, he could not file a particular document (which is a possession certificate allegedly issued on 05-10-2012 by the Gram Panchayat, Dumpagadapa); that it had been misplaced in his house and was traced out subsequently; and for this purpose, his evidence has to be reopened for further chief examination and for filing the evidence of P.W.2, and the said document be received in evidence.

7. By separate orders dt.07-06-2016, both these applications were rejected by the Court below. The Court below observed that the time gap between filing of I.A.Nos.64 and 65 of 2016 and the present applications is hardly one month and there is no reason assigned why the petitioner kept quiet earlier when the evidence was reopened and P.W.2 was recalled. It observed that if at all the evidence of P.W.3 is material, such a request could have been made in the earlier applications I.A.Nos.64 and 65 and 2016. It pointed out that P.W.3 is none other than

the mother of the petitioner and he could have adduced her evidence at earlier stage, but not after the case is posted for arguments. It pointed that petitioner is in the practice of filing applications one after other without any *bona fide* reasons, taking several adjournments when the matter is posted for arguments, then filing applications for reopening evidence and his conduct is not *bona fide*. It also observed that the filing of the document at this stage in I.A.No.159 of 2016 is to fill up lacuna in evidence.

8. Assailing the order in I.A.No.159 of 2016, petitioner filed C.R.P.No.3103 of 2016 and assailing the order in I.A.No.160 of 2016, petitioner filed C.R.P.No.2962 of 2016.

9. Learned counsel for the petitioner contended that grave injustice would be caused to the petitioner, if his evidence is not reopened, possession certificate issued by the Gram Panchayat is not received in evidence and he is not allowed to file further chief examination affidavit and also lead evidence of P.W.3.

10. From the facts narrated above, it is clear that the petitioner, being a plaintiff in this suit, had already adduced evidence of two witnesses P.Ws.1 and 2, that his evidence was closed on 05-05-2015 and the evidence on the side of the defendants was closed on 07-01-2016. Thereafter, the matter was posted for arguments on 22-01-2016.

Thereafter, the petitioner filed I.A.Nos.64 of 2016 and 65 of 2016 to reopen his evidence and recall P.W.2 for further cross examination. These applications were allowed on 02-03-2016 and he was allowed to reopen his evidence and recall P.W.2.

11. At the time when those applications were filed, the petitioner could have as well sought for these two prayers in the present I.A.Nos.159 and 160 of 2016. But he did not do it.

12. As regards this plea that he should be allowed to reopen the evidence again and examine as P.W.3 his own mother is concerned, no reason is assigned why he could not have examined his own mother as a witness (P.W.3) at the earlier stage of the proceedings and why he seeks to examine her after the matter is posted for arguments.

13. The suit being one for injunction, the petitioner ought to have been conscious of the fact that he needs to prove his possession of the property as on the date of the filing of the suit and he should have adduced evidence on this aspect at the time when he had the chance to do so between 15-07-2014 when the trial commenced, and 05-05-2015 when his evidence was closed. He cannot be allowed to file repeated applications for reopening his evidence, recalling witnesses or examining fresh

witnesses or filing documents as per his whims and fancies.

14. Having regard to the conduct of the petitioner, I am of the considered opinion that the Court below has not committed any error of jurisdiction in refusing to allow I.A.Nos.159 and 160 of 2016 and that it had rightly dismissed the said applications as attempts by the petitioner to drag on the proceedings on some pretext or other without any valid reason.

15. Therefore, both the Civil Revision Petitions are dismissed. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-07-2016

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