

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.Ps No.2643, 2910 and 2970 of 2016.

COMMON ORDER

All these Civil Revision Petitions are filed against common order dated 18.04.2016 against orders in I.A. Nos.169, 170 and 171 of 2016 in O.S.No.2004 filed by the petitioner seeking to reopen the case, to recall P.W.1 for further evidence and to receive the certified copy of deposition of P.W.2 in O.S.No.151 of 2003, respectively, wherein the Court below dismissed all the petitions.

2. Petitioner is the plaintiff in the suit O.S.No.26 of 2004 is filed for recovery of vacant possession of the suit open space under Section 6 of the Specific Relief Act. Interim applications i.e., I.A.No.169, 170 and 171 of 2016 are filed for reopening the case, recalling of the witness P.W.1 and for receiving certified copy of deposition of P.W.2 in O.S.No.151 of 2003, respectively. If the deposition of a witness is to be received, it should meet the requirements of Section 33 of the Indian Evidence Act, 1872.

Section 33 of the Indian Evidence Act, 1872, reads as follows:

“33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated- Evidence given by a witness in a judicial proceeding or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out-of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided-

that the proceeding was between the same parties or their representatives in interest;
 that the adverse party in the first proceeding had the right and opportunity to cross-examine;
 that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation-A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”

3. The Court below dismissed the applications on the ground that affidavit of the petitioner does not disclose that whether the deposition of P.W.2 i.e., Chinthala Bhoolaxmi in O.S.No.151 of 2003 and the proceeding therein are between the same parties and also there is no whisper whether the respondents had an opportunity to cross-examine the witness and that the subject matter substantially one and the same. The trial Court rightly held that the requirements as enumerated in the proviso of Section 33 of the Evidence Act are not satisfied.

4. Though the learned counsel for the petitioner submits that marking of deposition of P.W.2 in O.S.No.151 of 2003 is relevant for effective disposal of the suit, but affidavits filed in support of the interlocutory applications, does not indicate at least an averment is made stating that the requirements as mentioned in in Section 33 of the Specific Relief Act are satisfied.

5. Learned counsel for the respondents relied on the judgment reported in **Vempati Venkateswar Rao v. Challa Vijaya and another**¹ wherein the learned Single Judge held as follows:

“10. In the present revisions, none of the conditions, which have been enumerated under Section 33 of the Act, are either pleaded or proved. In other words, the conditions, which entitled invocation of Section 33 of the Act to bring on record the evidence given in other proceedings, are not present. This Court in Talasila Suresh

¹ 2015 LawSuit (Hyd) 741

and Katru John Kennedy held that existence of the circumstances mentioned under Section 33 of the Act is mandatory. It is also in Guduru Nirmala that the aspect of delay and importance of adhering to the procedure prescribed has been emphasized.

11. In the present set of facts and on account of confusion that the mandatory conditions prescribed under Section 33 of the Act being absent, the depositions in C.C.No.387 of 2008 cannot be brought on record. The two judgments, referred to by learned counsel for the petitioner, are not relevant and they do not answer the objection raised in the present cases on behalf of the respondents.”

6. In the present case also, no averment is made in the affidavit filed in support of the petitions that the conditions mentioned in Section 33 of the Indian Evidence Act are satisfied. More so, the suit is filed in the year 2004. The trial Court also found that the interlocutory applications are filed, after evidence at the stage of arguments.

In view of the above facts and circumstances and also in view of the judgment relied on by the learned counsel for the respondents, I do not see any reason to entertain the revisions by exercising jurisdiction under Article 227 of the Constitution of India and same are liable to be dismissed.

Accordingly, all the Civil Revision Petitions are dismissed.
No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these revision petitions, shall stands dismissed.

A.RAJASHEKER REDDY, J

27.08.2016
kvs

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Date: 27.08.2016

kvs