

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1470 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioners/plaintiffs is directed against the orders dated 11.03.2015 of the learned I Additional Junior Civil Judge, Ongole passed on a memorandum filed by the plaintiffs.

2. I have heard the submissions of the learned senior counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. The facts that lead to the filing of this revision by the plaintiffs, in brief, are as follows:

During the course of trial, the plaintiffs had filed an application under Section 151 of the Code of Civil Procedure, 1908 ('the Code', for short) requesting the Court below to reopen the suit for the purpose of adducing further evidence on behalf of the plaintiffs by summoning Tahasildar, Tangutur. That application with the said two prayers is filed only under Section 151 of the Code unaccompanied by separate application for summoning the Tahasildar. Neither the provision of law under Order XVI Rule 1 nor Rule 14 was mentioned in the said application. No-doubt the law is well settled that an application to reopen the evidence is not always necessary. It is also true that even though an incorrect and inappropriate provision of law is mentioned in the application of the parties, the Court can always apply the correct provision of law and grant the relief where the facts of the case warrant granting of any such relief. Be that as it may, the Court below by a common order dated 20.02.2015 had directed issuance of summons to

the Tahasildar for giving evidence and also to produce the original register corresponding to exhibits A4 to A6 already exhibited; and had further directed the plaintiffs to deposit the process fee for issuing summons to the said witness for his appearance before the Court. On due service of witness summons, the Tahasildar concerned had appeared before the Court below. For the reasons not clear and not to be found from the record, the Court below had treated the Tahasildar as a Court witness and conducted examination-in-chief and gave an opportunity to the learned counsel for the plaintiffs to cross-examine the said Court witness. However, without availing the said opportunity, the memorandum in question dated 11.03.2015 was filed before the Court below by the plaintiffs *inter alia* contending that the witness-Tahasildar was summoned as a witness of the plaintiffs; and, therefore, the Court ought to have given the plaintiffs an opportunity to examine him in chief and elicit the information regarding the truth or otherwise of the certified copies of certain documents, which are exhibited as exhibits A4 to A6; and that the Court ought to have allowed the plaintiffs to elicit, on the basis of comparison of the certified copies with the contents of the original register brought by him to the Court, the further information as to whether the said exhibits, which are certified copies, were given under the seal of the Tahasildar; and that in the circumstances the witness who was summoned at the instance of the plaintiffs ought not to have been treated as a Court witness; and that injustice has been done to the plaintiffs on account of the witness being treated as a Court witness; and that, therefore, the evidence recorded may be eschewed from consideration; and that an opportunity may be given to the plaintiffs to examine the Tahasildar as a witness on their side and conduct examination in chief. However, after hearing the learned counsel for the plaintiffs, the Court below by the order impugned, had over ruled the contents of the said memo by *inter alia* observing that the objections stated in the memo are not amenable and known to the Rules of

Procedure. Further, since the learned counsel for the plaintiffs refused to cross-examine CW1-the Tahasildar, the Court below had further recorded in the deposition of the said witness that “the cross-examination for the plaintiffs is ‘nil’”. Aggrieved of the said orders, the plaintiffs preferred this revision.

4. The learned senior counsel appearing for the plaintiffs would submit that though the application has been filed by mentioning Section 151 of the Code, a reading of the prayer in the application would indicate that the plaintiffs had intended to summon the said witness as a witness for the plaintiffs to prove the genuineness or otherwise of exhibits A4 to A6; and that when once that application was allowed and the witness was summoned on the application of the plaintiffs and not by the exercise of the *suo motu* powers of the Court as contemplated under Order XVI Rule 14 of the Code, the Court ought not to have treated the witness/Tahasildar as a Court witness; and that the Court ought to have, therefore, allowed the plaintiffs to examine him as a witness for the plaintiffs and not as a Court witness; and that a plain reading of Order XVI Rule 1(3) makes it manifest that a witness can be summoned through Court at the instance of any of the parties though the name of the witness is not mentioned in the list of witnesses provided sufficient cause is shown for such omission; and that in the facts and circumstances, the Court below ought to have allowed the request in the memo of the plaintiffs instead of rejecting the same.

5. On the other hand, the learned counsel for the defendants while supporting the order impugned would contend that no separate application with the correct provision of law is filed for summoning of the witness; and that the Court having summoned the witness had treated him as a Court witness and had conducted examination-in-chief; and that the plaintiffs did not avail the opportunity to cross-examine the said witness; and that, therefore, the Court below had rightly over ruled the

objection in the memo of the plaintiffs; and that, in the facts and circumstances of the case, the order impugned does not brook interference.

6. I have bestowed my attention to the facts and given earnest consideration to the submissions. I have gone through the provisions of law referred to above.

7. In the first place, it is to be reiterated that the application is not filed for summoning the witness by mentioning specifically either of the provisions viz., Order XVI Rule 1 or XVI Rule 14. The law is well settled that the power under Order XVI Rule 14 can be exercised by the Court *suo motu* and that the Court, exercising the said power under the said provision of law, can summon any witness as a Court witness provided the exercise of such power is necessary in the interests of justice and would be useful for clarifying any ambiguities in the evidence and helps in furtherance of justice. Generally that power would be exercised by the Court when the parties refrain from summoning a crucial witness on their apprehensions that such witness if summoned on their side may not give full fledged support to their case. Though the power under Rule 14 of Order XVI of the Code is to be exercised by the Court on its own accord and not at the instance of a party to the suit, an application filed by a party to summon any witness as a Court witness can always be treated as a means for placing the required information before the Court to bring to its notice the fact that the examination of a particular witness as a Court witness is necessary in the interests of justice and that the case before it is a fit case for invoking such power by the Court in the interests of justice.

8. Reverting to the facts of the case, what is to be noted is that the examination of the said witness-Tahasildar was intended by the plaintiffs only to prove the genuineness or otherwise of exhibits A4 to A6 after

comparing the said certified copies with the contents of the corresponding originals in the Register, which the witness was required to produce. On the appearance of the witness with the said register, the Court below, for reasons not clear and not to be found on record, treated him as a Court witness and conducted examination-in-chief. Thereafter an opportunity was provided to the learned counsel for the plaintiffs to cross-examine the said witness. However, without availing the said opportunity, the memo in question, with the contents, which are already extracted supra, was filed before the trial Court. What is significant to note is that the provisions of the Indian Evidence Act dealing with the examination of a witness, particularly, Section 142 lays down that any question suggesting the answer which the person putting it wishes or expects to receive shall not be put in the examination in chief. To put it in other words, leading questions must not, if objected to by adverse party, be asked in examination-in-chief or in re-examination except with the permission of the Court. It is not stated before this Court and it is not the case of the plaintiffs that any answers that were elicited by the Court in the examination-in-chief of the Court Witness - the Tahasildar are adverse to the interests of the plaintiffs. Further, an opportunity to cross examine the said witness was also given to the plaintiffs counsel though not availed. In the facts and circumstances, this Court finds, therefore, that no prejudice has been caused to the plaintiffs in this matter on account of the procedure followed by the Court below and in treating the witness summoned as a Court witness. The law is well settled that under Section 143 of the Indian Evidence Act, leading questions may be asked in cross examination. Therefore, in treating the witness summoned as a Court witness and providing an opportunity to the plaintiffs to cross-examine the said witness, the plaintiffs were placed in a more advantageous position and, as a result, the contention that injustice has been done by the trial Court in treating the witness summoned as a Court witness cannot be countenanced.

9. Viewed thus, this Court finds that there is no merit in the revision petition calling for interference in the matter.

10. In the result, the Civil Revision Petition is dismissed. However, it is made clear that the plaintiffs are at liberty to file an appropriate and necessary application for recalling the said witness-CW1 and permitting them to cross-examine the said witness, if they so choose and desire. It is needless to mention that if any such application comes to be filed, the trial Court shall give an opportunity to the defendants to file a counter and then consider the said application of the plaintiffs in accordance with the procedure established by law and give them an opportunity to cross examine the said witness. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

14.03.2016

Vjl