

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.1346, 1540, 1549 and 1622 OF 2016

COMMON ORDER:

The Civil Revision Petitions are filed against the orders dated 11.12.2015, 11.12.2015, 07.12.2015, 04.12.2015 passed in I.A. Nos.1295, 1296, 1294 and 1297 of 2015 respectively in O.S. No.94 of 2006 on the file of IV Additional District Judge, Visakhapatnam.

2) Heard learned counsel for the revision petitioner/ plaintiff in O.S. No.94 of 2006 and learned counsel for the respondents. Perused the material on record.

3) The suit O.S. No.94 of 2006 was filed by Voodikala Laxmana Rao, for declaration and other reliefs in respect of the property in dispute and the defendants 1 to 6 are the rival contestants mainly in setting up independent claim over the property. Leave about the contest of defendants 7 to 11 that the same is not a private property for alienation but for of Kota Narasimhaswami's property, which is an endowment and in the factual scenario, the trial went on and on 07.08.2015, which is after the evidence of the plaintiff and defendants 1 to 6 completed, while evidence of defendants 7 to 11 was in progress, there was closure of the evidence for defendants 7 to 11 did not adduce any further evidence in closing the evidence, practically for argument. On that, the four applications i.e., I.A. Nos.1294, 1295, 1296 and 1297 of 2015 were maintained by the defendants 1 to 6, of which 1) to grant leave for filing the documents, 2) reopen the suit for the purpose of marking the documents 3) to recall the DW.5 for further cross examination on behalf of defendants 1 to 6 with regard to the

evidence in relation to the conflict between the interests of the defendants *inter se* 4) re-open the case for the purpose of recalling the PW.1 for the purpose of marking the documents.

4) A perusal of the record shows that there is no notice given to the plaintiff by the lower Court because even the revision respondents/ petitioners/ defendants 1 to 3 of four applications supra would not demonstrate of giving of any notice for no endorsement on the certified copies of the original petitions much less there is any memo. Practically, there is inadvertence by the Court below in saying notice given to other side.

5) It is as ambiguous as anything, even for the judicial conscious of the trial Court, had it been applied its mind as if notice given for the two sides from the three fold rival contest, at best, to defendants 7 to 11, for nothing from the plaintiff, therein no notice given. It is needless to mention, but for necessary in the contest, that there is adjournment application filed by plaintiff before the trial Court and covered by the docket order dated 10.02.2016 says there is a clear mention by the self same judge in I.A. Nos.1294, 1296 and 1297 of 2015 that there is nothing to say any notice was given to the plaintiff while allowing the petitions, under misconception.

6) Here another aspect the Court cannot ignore is that the subsequent docket order says as if notice given to other side, which is under the impression of including to the plaintiff, which is only under a misconception. The act of Court infact shall prejudice no man therefrom as per the latin maxim '*Actus curiae neminem gravabit*'. The Court's memory be in fresh, immediately

if not sooner to the docket order, to seek for rectification. However after several postings of the matter for counters and from no counter filed and no representation, ultimately the petitions are allowed. It is not only the same but also there is a subsequent development pursuant to the reopen order, recall of PW.1, receiving of documents to exhibit through DW.1 on behalf of defendants 1 to 6, there is further chief examination taken by the Court, which is not a correct procedure, but for at best to examine further before the Court to record further chief examination, as once the chief affidavit is filed and witness is cross examined, there is no question of again filing of further additional chief affidavit including from a close reading of Order XVIII Rule 4 C.P.C, which otherwise speaks mandatory of filing chief affidavit instead of examination before the Court initially. However, once the chief affidavit has taken on record and documents are exhibited, any further examination in-chief and cross examination or re-examination and even recall further examination is only to record either by Court or Court Commissioner, if appointed, as the case may be, and not by filing additional or further chief affidavit/s.

7) No doubt, this is a subsequent event that was practically cause allowed though unconsciously, if not to presume consciously, from plaintiff representing through advocate supposed to know the docket proceedings of the Court from time to time for invariably in the subordinate courts, there is a 'B' diary mentioning every day docket orders for verification on the self same date at its

end of proceedings or atleast on the next day, which 'B' diary docket steps are open for verification.

8) Here, it is within the scope of Order XVIII Rule 17 C.P.C, which infact is not any right of the party but for discretion of the Court where it finds necessary of permitting or receiving additional evidence to clarify any ambiguity or any cloud, but not fill up the lacunas by the parties, much less to file by way of further chief examination affidavits and its receiving, but for either to permit questions to be asked by parties or to be put by the Court in such recall further examination including for marking documents within that scope.

9) Having regard to the above, it requires what the documents marked as subject to objection and what the chief-examination allowed as to the extent relevant to decide the relevancy and admissibility on the chief examination also ultimately to appreciate what is legally admissible and to ignore the remaining which is not relevant. Thus, to the extent of recalling the evidence of DW.1, receiving of documents and further chief examination concerned, the same is upheld to avoid further complications. However, same is subject to right of the plaintiff about his objection to the documents marked to record as marked subject to objection with need to decide ultimately, the relevancy and admissibility and proof if any, also of the chief examination affidavit contents to consider what is relevant and admissible and ignore from appreciation what is inadmissible irrespective of any relevancy.

10) Thus, to the above extent, the C.R.P. Nos.1549, 1346 and 1622 of 2016 are disposed of, however, by confirming the said order of the lower Court and subject to the above observations and further subject to payment of costs of Rs.5,000/- by the defendants 1 to 6 to the counsel for plaintiff, if received by filing memo in proof of it by said counsel, else to deposit before the lower Court within (10) days from the date of receipt of the order, and on such deposit of amount, the Court can remit to the District Legal Services Authority, unless the plaintiff receives by filing cheque petition.

11) So far as C.R.P. No.1540 of 2016 covered by I.A. No.1296 of 2015 to recall DW.5 is concerned, the law is fairly settled that Court, in a suit between the plaintiff and defendants, need not dwell into to decide the inter se dispute between the defendants and once such is the case, for what the recall of DW.5 as D7 among defendants 7 to 11 asked by defendants 1 to 6 in relation to the inter se dispute is not a matter of reopen much less as a matter of course and the lower Court did not apply its mind, leave about no hearing of the plaintiff much less with opportunity of filing counter, if any, as referred supra. The order under revision is thus liable to be set aside by allowing the revision. Having regard to the above, the C.R.P. No.1540 of 2016 is allowed and the impugned order of the lower Court dated 11.12.2015 to recall DW.5 is set-aside and the matter is remitted to the lower Court to decide afresh with notice and giving opportunity of filing of counter and hearing not only to the plaintiff but also to the defendants 7 to 11.

12) Consequently, pending miscellaneous petitions, if any,
shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.26.08.2016
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Date:26.08.2016

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