

HON'BLE SRI JUSTICE R. KANTHA RAO

+ Civil Revision Petition No.2691 of 2016

%29.07.2016

Sanagala Srinivasulu

...Petitioner

VERSUS

\$ Ponnampola Seetharamaiah

...Respondent

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri M. Ravindra

^Counsel for Respondent: Sri V. Siva Prasad Reddy

? Cases referred

1. (2011) 11 SCC 275
2. 2014(1) ALT 268
3. 2010(6) ALT 776
4. 2013(6) ALT 412

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Civil Revision Petition No.2691 of 2016

Between:

Sanagala Srinivasulu

.. Petitioner (s)

And

Ponnampola Seetharamaiah

.. Respondent (s)

JUDGMENT PRONOUNCED ON : 29.07.2016

HON'BLE SRI JUSTICE : CHALLA KODANDA RAM

1. Whether Reporters of local newspapers :
may be allowed to see the Judgments?

2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to :
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Civil Revision Petition No.2691 of 2016

ORDER:

This civil revision petition is filed aggrieved by the order dated

30.04.2016 in IA No.356 of 2015 in OS No.159 of 2010 passed by the learned V Additional District Judge, Nellore, wherein the court below dismissed the above petition.

2. The petitioner/plaintiff filed suit in OS No.159 of 2010 against the respondent/defendant, for specific performance of agreement of sale dated 07.03.2005. In the suit, the defendant filed his written statement on 02.11.2010. PW.1 filed affidavit in chief examination on 07.09.2011 and his evidence was closed on 27.08.2015. The evidence on behalf of the defendant was also closed on 30.11.2015. The present I.A. was filed on 14.12.2015 seeking to reopen the suit. The reasons stated in the affidavit filed along with the reopening petition are that as the respondent disputed the signature in Ex.A.9 and also delivery of possession of the schedule property under Ex.A.10, the petitioner desires to prove that the property is in his possession and enjoyment and also to prove the signature in Ex.A.9, he has been advised to file the petition to reopen the suit, enabling him to adduce further evidence on his behalf. The court below, after considering the respective submissions, and more particularly, considering that the case is at the stage of arguments, had dismissed the I.A.

3. Learned counsel appearing for the petitioner submits that along with the reopening petition, the petitioner also filed petitions, namely, one for seeking recall of DW.1, enabling him to further cross-examine DW.1, another petition seeking to sent the signatures of the respondent on Ex.A.9 for comparison with the admitted signatures of the respondent on Exs.A.7 and A.8 and other available signatures, for opinion of Handwriting Expert and also another petition to recall PW.1, enabling him to mark the documents mentioned in the list of documents. As the reopening application has not yet been allowed, the other petitions have not yet been numbered.

4. Learned counsel for the petitioner very diligently would advance

persuasive arguments to say that the Advocate, who was appearing on behalf of the petitioner/plaintiff had passed away and thereafter, another Advocate was engaged, who had not completed the evidence. At this stage, when the matter was about to take up for arguments, the petitioner, on going through the record, found that the counsel who has appeared earlier, notwithstanding the petitioner had handed over the documents, which were listed in seven in number along with the application, in un-numbered I.A., were not placed on record and thus, it has become necessary and when he confronted with the Advocate, he had chosen to give up his vakalat. The petitioner, having no other alternative, by engaging another Advocate, had filed the present I.A.

5. Learned counsel for the petitioner by placing reliance on the judgment of the Apex court in '**K.K.Velusamy vs. N.Palanisamy**'^[1], would submit that at any stage, even at the stage of arguments, it is always open for the court to exercise jurisdiction under Section 151 or under Order 18 Rule 17 CPC, to do justice.

6. On the other hand, learned counsel for the respondent opposes interference with the order of the court below. He would submit that it is impermissible for the court to fill-up lacunas in evidence. He also would point out that the reasons, which are being stated before this court, are not stated before the court below and it is impermissible for this court to take into consideration of any of the matters, which were not there before the court below, in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India. Learned counsel for the respondent would also rely on the judgments of this court in '**Shaik Gousiya Begum vs. Shaik Hussan**'^[2], '**Karnapu Satyanarayana vs. Chappa Venkata Rao**'^[3] and '**Yousuf Saleh @ Raisa vs. Aisha Siddique**'^[4], in support of his contention.

7. Having given anxious consideration for the respective submissions, having perused the written statement, which has been filed

by the respondent, it may be noted that the respondent had admitted the execution of the agreement of sale in favour of the petitioner. The written statement was filed on 02.11.2010 and the defendant evidence was closed on 30.11.2015. On 14.12.2015, the present I.A. for reopening of the suit has been filed. The reasons for reopening the suit are already set out. The above reasons, which have stated, are at variance with what the petitioner submitted across the bar.

8. A perusal of the reasons stated in the affidavit, there is no manner of doubt that the reopening is sought only on account of the fact that the respondent had disputed the delivery of possession, and disputed the signature on Ex.A.9 and also certain payments, which are alleged to have been made by the petitioner/plaintiff. These are all matters, which the petitioner/plaintiff are required to establish in the suit at the earliest point of time. The denials with respect to the payments or with respect to the execution of Ex.A.9 or possession, not being delivered, are all the defences which are taken by the respondent in the written statement was filed on 02.11.2010 itself. In other words, the petitioner/plaintiff was aware or ought to have been aware with regard to the nature of the evidence, which is required to be brought on record to succeed in the suit. It is only after closure of the evidence on behalf of the defendant on 30.11.2015, the plaintiff had realised that certain evidence further have improve his case. That hardly can be a reason for the petitioner seeking to reopen the suit, especially at the stage of arguments.

9. So far as the judgments cited either by the learned counsel for the petitioner or by the learned counsel for the respondent, there is no dispute about the *ratio decidendi* stated therein that it is at the discretion of the court depending on the facts of each case and the court has power under Section 151 CPC reopen the suit or to recall a witness under Order 18 Rule 17 CPC. In the present case, the court below had come to the conclusion that the petitioner has not assigned any reasons for his failure

to produce the documents before the court, while he was adducing evidence on his behalf and the petitioner has not come to the court with clean hands with a request to reopen the suit at this belated stage to allow him to adduce further evidence and there are no such circumstances warranting to allow the reopening petition. For the reasons and analysis stated above, this court does not find any justification in interfering with the orders passed by the court below.

10. Accordingly, the civil revision petition is dismissed. There is no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this civil revision petition, shall stand closed.

CHALLA KODANDA RAM, J

Date: 29.07.2016
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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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Date: 29.07.2016

- [1] (2011)11 SCC 275
- [2] 2014(1) ALT 268
- [3] 2010(6) ALT 776
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