

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.4958 of 2016

Order:

Aggrieved by an order of the Trial Court refusing to reopen the evidence, at the behest of the plaintiff, he has come up with the present revision.

2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner and Mr. Ramiseti Naga Hemanand, learned counsel for the respondents.

3. The petitioner filed a suit for declaration, recovery of possession as well as the mandatory injunction. On his side the plaintiff already examined 5 witnesses. When the matter was posted for further evidence to 27-7-2016, the petitioner could not file the proof affidavits of additional witnesses that he sought to examine. Therefore, the Court below closed evidence on the side of the plaintiff.

4. Thereafter, the petitioner/plaintiff filed an application in I.A.No.884 of 2016 for reopening his evidence and for allowing him to examine 8 witnesses as P.Ws.6 to 13. This application was rejected by the Trial Court on the ground that the petitioner lost an opportunity given to him earlier and that the attempt was only with a view to drag on the proceedings. Therefore, the plaintiff is before me.

5. The actual prayer made by the petitioner before the Trial Court is as follows:

“Therefore, I pray that this Honourable Court may be pleased to pass orders, issue summons to the proposed witnesses to examine them as witnesses P.Ws.6 to 13 who are namely 1) Mandal Surveyor, who assisted the Commissioner Sri N.Venkateswara Rao, 2) Gurram Raju S/o.Sabastin, 3) the scribe by name Peddapalli Koteswara Rao on Exs.A-1 and A-3, 4) Ariga Prabhudas of 8<sup>th</sup> Ward, Avanigadda, who well known the location of the plaint schedule property, 5) the Tahsildar, Avanigadda to give evidence on Ex.A-6 (possession certificate dated 10-7-2010), 6) Venna Sudhakara Rao, who is first attester on Exs.A-1 and A-2, 7) Bussa Anjaiah, who is no other than second attester on Exs.A-1 and A-2, 8) Dasi Biksham of 14<sup>th</sup> Ward, Avanigadda in the interest of justice.”

6. It is true that if the plaintiff had filed proof affidavits in lieu of chief-examination, of all these 8 witnesses on 27-7-2016, the Court could not have closed the evidence. But, nevertheless, the Court could have in law, if not in practice, examined the necessity for examining so many witnesses. Therefore, the rejection of the application to allow the plaintiff to examine more witnesses, on the grounds stated in the impugned order cannot be sustained. One default on 27-7-2016 to file proof affidavits in lieu of chief-examination, cannot lead to this consequence. Hence, the order of the Trial Court deserves to be set aside.

7. But at the same time in a suit for declaration, recovery of possession and a mandatory injunction, I do not know why so many witnesses are necessary. Out of the 8 witnesses that the petitioner seeks to examine, I find that the examination of the Mandal Surveyor, who assisted the Advocate-Commissioner, may be of relevance. But the

examination of Gurram Raju and Peddapalli Koteswara Rao, who were the scribes of Exs.A-1 and A-3, may not be necessary since these documents even as per the order of the Trial Court, are not disputed documents. Similarly, the examination of one Ariga Prabhudas for the purpose of identifying the location of the schedule property and the examination of the Tahsildar, Avanigadda, who issued Ex.A-6 may not be necessary, since the suit is for recovery of possession and also since Ex.A-6, is an admitted document. On the same analogy, the examination of Venna Sudhakara Rao and Bussa Anjaiah is also not necessary since they are sought to be examined only in support of two admitted documents, namely, Exs.A-1 and A-2. The examination of Dasi Biksham is also not necessary, since he is in the 14<sup>th</sup> Ward, Avanigadda. The suit is for recovery of possession of a property, whose details are available on record along with the Advocate-Commissioner's report.

8. Therefore, while I find that the rejection of the application for reopening the evidence on the side of the plaintiff was not proper, I am also of the view that except the examination of Mandal Surveyor, the examination of other witnesses is not necessary in view of the reasons stated above.

9. In view of the above, the revision is allowed and the order of the Trial Court is set aside. The petitioner is permitted to file necessary application for summoning the

Mandal Surveyor. The Court shall thereafter examine the said application, pass orders and proceed with the trial of the suit. The other witnesses are unnecessary. The Trial Court shall endeavour to dispose of the suit within a period of 5 (five) months since the suit is of the year 2006. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

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V.RAMASUBRAMANIAN, J.

25<sup>th</sup> November, 2016.  
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