

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.3389 of 2017

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CIVIL REVISION PETITION No.3391 of 2017

COMMON ORDER:

1) Since the issue involved in both the C.R.Ps., is inter connected, they are being disposed of by this Common order.

2) Assailing the orders passed in I.A.No.652 of 2017 and I.A.No.651 of 2017 in O.S.No.559 of 2011 on the file of the Principal Junior Civil Judge, Tirupati, wherein an application filed under Order XVIII Rule 17 of C.P.C., read with Section 151 C.P.C., to recall P.W.1 for further cross-examination; to mark certain documents and to reopen the suit respectively, are rejected, the present C.R.Ps. are filed under Article 227 of the Constitution of India.

3) The first respondent/plaintiff filed the above suit seeking permanent injunction restraining the defendants, their men, agents from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property. After completion of the evidence of plaintiffs and when the case is posted for arguments, the present application came to be filed seeking to recall P.W.1. The averments in the affidavits filed in support of the said application show that one Pralayakaveri Gangi Reddy was the owner of the land admeasuring Ac.1.29 cents in Sy.No.8/1 of Mangalam village accounts and he had a brother by name P.Bakka Reddy @ Subba Reddy in whose

favour the said Gangi Reddy executed a registered settlement deed dated 16.08.1958, to an extent of Ac.0.20 cents. It is said that these facts were suppressed by the plaintiff. It is further stated that during the evidence of defendant, plaintiff's counsel confronted the third party documents i.e., Exs.A-6 to A-8, which were not referred to in the plaint or in the pleadings. In view of the above, it is said that they have lost an opportunity to cross-examine the plaintiff with reference to the above documents.

4) A counter came to be filed disputing the averments made in the affidavit filed in support of the Petition. It has been averred that the present application has been filed only with a view to drag the proceedings. According to him, the evidence of the petitioner was closed on back and when the case is posted for arguments, the impugned petition came to be filed.

5) After considering the rival arguments, and taking into consideration the averments made in the affidavit and counter, the trial court rejected the request. Challenging the same, the present C.R.Ps. came to be filed.

6) At the time, when the matter is taken up for hearing, it is brought to the notice of the Court that the arguments in the said case are already over and the case is posted for judgment. Referring to the answers elicited in the cross-examination of D.W.1, list of documents, which were filed along with plaint and the observations

made by the trial court with regard to the memo of P.Srinivasulu Naidu and G.Venkateswarlu being incorporated in the documents, which according to the petitioner, is incorrect, pleads interference. The same is opposed by the learned counsel for the respondents contending that the discrepancy which is now raised was brought to the notice of the Court during the course of arguments and the court after taking into consideration all the submissions made, including those which were advanced, more particularly the discrepancy with regard to the things, which are reflected in the impugned order, reserved the main suit itself for judgment. It is to be noted here that the grievance of the petitioner appears to be that though there is no reference to Exs.A-6 to A-8 in the plaint, the plaintiff could not confront the defendant with those documents. In other words, the request to recall P.W.1 is to further cross-examine him with regard to the documents, which were confronted by P.W.1 to D.W.1. The same, in my view, cannot be accepted. The plaintiff gets a right to confront the documents only during the cross-examination and mark the same in accordance with the procedure. Truthfulness, genuinity and relevancy of the documents would always be decided by the trial court, at the time of final adjudication of the matter. It is also to be noted here that there is a clear averment in the plaint as to how the plaintiffs got title over the property. The discrepancy if any which is pointed out by the learned counsel for the petitioner cannot be a ground to recall P.W.1 at this stage of the proceedings when the main suit is

reserved for judgment. The petitioner had every opportunity to advance arguments on the discrepancy, which is now pointed out, namely the reference to the name of Srinivasulu Naidu and G.Venkateswarlu in the said documents.

7) Having regard to the above, the question of recalling P.W.1 for further cross-examination of P.W.1 by D.W.1, cannot be accepted. It is no doubt true that the court has got power to recall P.W.1 at any stage of the proceedings, but having regard to the facts and circumstances referred to above and since the case is now reserved for Judgment, I see no grounds to interfere with the orders under challenge.

8) Accordingly, both the Civil Revision Petitions are dismissed. No costs. Miscellaneous Petitions pending if any in these C.R.Ps., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:12.09.2017
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