

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos.3828, 4008 AND 5263 OF 2017

COMMON ORDER:

These civil revision petitions are arising out of the docket orders passed by the learned District Judge, Vizianagaram in I.A.No.801, 802 and 803 of 2017 in O.S.73 of 2012, dated 06.07.2017.

The revision petitioner is Battula Chandhu, the plaintiff in O.S.No.73 of 2012, who filed a suit against the Executive Officer, Commissioner of Endowment, Deputy Commissioner of Endowment and Assistant Commissioner of Endowment of Endowment Department, for declaration of title and permanent injunction. The learned District Judge, Vizianagaram allowed all the above interlocutory applications which were filed under Section 151 C.P.C. permitting the Executive Officer to produce further evidence and documents. Aggrieved by the orders passed in Interlocutory Applications, the plaintiff-Bathula Chandhu filed these three Civil Revision Petitions.

Learned counsel for the revision petitioner argued that the impugned orders whereby the learned Judge allowed the applications filed under Section 151 CPC, to reopen the evidence of D.W.1, are illegal. He submitted that as the specific provision for recalling a witness is Order XVIII Rule 17 CPC, the impugned applications are not maintainable and are liable to be dismissed.

No doubt the above applications were filed under Section 151 CPC to reopen the evidence of D.W.1 by the trial Court. The procedure is handmaid of justice. The petitioners ought to have filed a petition under Order XVIII Rule 17 CPC for recalling of witness and for reopen of the evidence. Instead of that the petitioner had filed a petition under Section 151 CPC. The technicalities cannot vitiate the rights of the parties. The trial Court considering the facts and circumstances of the case has allowed the Interlocutory Applications to reopen the evidence and to receive the documents, but, however, on payment of costs of Rs.300/-. Therefore, the objection raised by the learned counsel for the revision petitioner is not sustainable.

Learned counsel referred to the counter filed by the plaintiff/respondent before the trial Court in the Interlocutory Application, which reads as under:

“The plaintiff/respondent submits that the defendant No.1 filed their written statement stating that the schedule mentioned property was originally belongs to Raja of Vizianagaram and the defendant No.1 deity temple is one of the temples in a group of 104 temples maintained by the then Maharaja of Vizianagaram. The said 104 temples are spreaded over from Srikakulam District to East Godavari District. The then Raja of Vizianagaram was a religious and charitable and endowed various landed properties in larger extents to many more of 104 temples. The defendant No.1 is one of such deity temples endowed with total extent of Acs.321.00 cents spreaded over in Neliwada and Garudabilli Village. The Survey Number shown in the plaint schedule consists of the total extent Acs.22.60 cents besides of the said extent Acs.22.60 cents, there is another Acs.48.00 cents extent is contagious to that of Acs.22.60 cents situated in Garudabilli Village bearing other survey numbers. The said total extent of Acs.70.00 cents was being cultivated in tenancy form.

The plaintiff/respondent submits that the defendant No.1 filed a written statement stating that the Sagi Bangarraju was a trespasser of the schedule mentioned property. That the defendant No.1 did not take plea in their written statement that the Sagi Bangarraju was tenant under the 1st defendant for the schedule mentioned property. So, at this stage re-open the suit on the 1st defendant side and short for examination of the additional witness to prove that the Sagi Bangarraju was tenant under the 1st defendant does not arise. The plaintiff/respondent submit that the Sagi Bangarraju is absolute owner of the schedule mentioned property as per the Settlement Adangal and MDR and FCO Fair Adangal and Sagi Bangarraju is not tenant to the defendant No.1 for the schedule mentioned property.”

It is submitted that defendant No.1 filed a written statement stating that Sagi Bangarraju was a trespasser of the schedule mentioned property. Defendant No.1 did not take a plea in their written statement that Sagi Bangarraju was tenant under 1st defendant for the schedule mentioned property. So at this stage reopening the suit on 1st defendant's side to prove that Sagi Bangarraju was tenant under 1st defendant does not arise.

As far as this contention is concerned, the trial Court has observed that the petitioner is contending that the schedule lands are endowment lands and the said Bangarraju is a tenant and all those aspects are relevant facts in the suit. The trial Court considering the filing of classification register and suit extract and tenancy dispute has allowed the applications for reopen and recall. Therefore, there are no grounds to interfere with the findings of the trial Court which is conducting the trial and considering various documents and their relevancy before it.

In view of the foregoing reasons, there are no grounds to interfere with the orders passed by the trial Court.

In the result, the C.R.P.Nos.3828, 4008 and 5263 of 2017 are dismissed granting liberty to the petitioner to adduce evidence on his behalf if required, in the light of the evidence adduced by the respondents. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 27.10.2017
ssp

GUDISEVA SHYAM PRASAD,J

