

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.1281 OF 2012

DATED : 17.11.2017

Between :

Chikkala Veera Venkata Satyanarayana,
S/o.Satyanarayana, Aged 40 yrs,
R/o.Siripuram Village, Karapa Mandal,
East Godavari District, A.P.

.. Petitioner

And

Nunna Subba Laxmi W/o.Veeranna,
Aged 42 yrs, R/o.Present at Toorangi Petrol Pump Pansho,
Kakinada, Ramachandrapuram road,
Kakinada, Rural Mandal,
East Godavari District, A.P. & another.

... Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
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ORDER:

Heard Sri B.Ramesh learned counsel representing Sri V.Sai Kumar, learned counsel for the petitioner/ first defendant and Sri B.S.Karthik, learned counsel for the respondent/plaintiff.

2. For the sake of convenience the parties herein are referred to as arrayed in the suit.

3. The plaintiff/ 1st respondent herein instituted O.S.No.1222 of 2005 on the file of I Additional Junior Civil Judge at Kakinada, East Godavari District, for recovery of possession. In the said suit, the first defendant filed I.A.No.135 of 2012 to reopen his side of evidence to enable him to adduce further evidence. In the affidavit filed in support of the said petition, the first defendant averred that plaintiff was making false claim over the suit schedule property and to disprove the same, he intend to examine the third party by name Sivaneni Srinivasu S/o.Ganga Rao of Siripuram Village, who owns land to the west of schedule property. The chief-examination of the said witness was prepared and served on the opposite party. The said witness also attended before the Court on 02.03.2012. However, at about 1.00 p.m, he went out of the Court premises for attending calls of nature and in the meanwhile the matter was called and his side of evidence was closed and posted the matter for arguments. It is further averred that though the Counsel sought adjournment to adduce further evidence on his behalf, the Court declined to grant any further time. According to the deponent, the said witness was essential to prove his defence and

that there was no wilful negligence or laches on his part in not examining the witness on the date of adjournment.

4. The trial Court considered the plea raised by the 1st defendant and having gone through the proceedings, the trial Court closed the evidence on behalf of the defendants and posted the matter for arguments. Having regard to the history of the case, granting several adjournments and affording opportunities to the first defendant, the trial Court was not inclined to reopen the evidence and accordingly dismissed the application. Aggrieved thereby, this revision is preferred.

5. Learned counsel for the first defendant sought to contend that on account of the order passed, the defence of the first defendant was closed without affording due opportunity thereby causing lot of harm to his defence. He would further submit that the trial Court ought to have appreciated that on the date fixed for appearance of the witness, he was present in the Court, but due to personal reasons/to attend calls of nature, he left the premises at about 1.00 p.m., and at that time the case was called. In fact the counsel on record requested for adjournment, but the same was refused. These were the mitigating circumstances necessitating the first defendant to file the said I.A. The trial Court erred in dismissing the petition by narrating the history of adjournments granted without appreciating what transpired on that day.

6. Learned counsel for the plaintiff submitted that the first defendant has been dragging on the matter. Several opportunities were afforded to him, but he did not avail the same. As narrated in the docket order by the trial Court, it would clearly show that the intention of the first defendant was only to drag on the case.

7. The docket order which is assailed in this revision would show that the suit was coming up for evidence of first defendant since 30.09.2011. On 14.10.2011 the witness was absent. On that day D.W.2 was examined and Exs.B.1 to B.12 were marked and on the same day another document petition was filed by the first defendant. But the same was dismissed, against which the first defendant preferred C.R.P.No.4625 of 2011. This Court granted stay on 08.10.2011 and thereafter it was disposed of on 08.12.2011.

8. As per the orders in the said Revision the matter was reopened for marking of documents. On 09.02.2012 the witness was absent. Therefore, the defence evidence was closed and the matter was posted to 14.02.2012 for arguments. On that day, first defendant filed petitions to reopen and recall Dw.2 for further examination. In those petitions, the first defendant sought for reopening of evidence for further examination of Dw.2 only. However, while allowing two petitions, by order dated 23.02.2012 not only Dw.2 was recalled for further examination, but the matter was posted for further evidence. The trial Court noticed that though petition was filed to recall only Dw.2 for further examination and even though objection was raised that first defendant cannot adduce any further evidence, overruling the objection, first defendant was permitted to adduce evidence of Dws.2 and 3. After examination of Dws.3 and 4 in chief on 29.02.2012, the matter was posted to 02.03.2012 for cross-examination of Dws.3 and 4 only. On 29.2.2012 no steps were taken for further evidence of first defendant. Therefore, on

02.03.2012 the trial Court observed that after cross-examination of Dws.3 and 4, as the further evidence was not adduced, the defence evidence was closed and matter was posted for arguments.

9. It is appropriate to note that suit is of the year 2005 and inspite of granting sufficient opportunity, first defendant did not avail the same. Therefore the first defendant is not entitled to drag on the matter in the said manner on some pretext or the other. Even assuming that the concerned witness attended to Court on the concerned date, it was for first defendant to ensure appearance of the witness when the case was called.

10. In the said background, as narrated in detail by the trial Court, the trial Court was right in not accepting the plea of the first defendant. I am of the considered opinion that trial Court has not committed any error in dismissing the petition.

11. The Civil Revision Petition is accordingly dismissed with the above observations. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

P.NAVEEN RAO,J

17th November 2017
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