

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.3230 & 3231 of 2017

COMMON ORDER:

These two Civil Revision Petitions are maintained by the plaintiff in O.S.No.62 of 2015 on the file of the Junior Civil Judge, Naidupeta, Sri Potti Sriramulu Nellore District.

2. The respondent to the present Civil Revision Petitions is the defendant in the suit, which was filed for the relief of specific performance of the agreement of sale dated 22.05.1987. In the course of trial, after the completion of evidence of PW.1 the plaintiff filed I.A.No.946 of 2015 to receive the documents, by condoning the delay in filing, which are the certified copy of the file RCB No.226/ 2013 with regard to the mutation of the name of plaintiff as enjoydar of the suit schedule survey No.143-5 and for other survey numbers issued by the Tahsildar, Naidupeta, dated 19.02.2015, and the Adangal copy; and the said interlocutory application was ended in dismissal on 27.01.2016. Against the said dismissal order, the plaintiff filed C.R.P.No.4691 of 2016. The other Bench of this Court, by order dated 03.02.2017, allowed the said C.R.P. by setting aside the dismissal order in I.A.No.946 of 2015, subject to costs of Rs.2,000/- to the respondent-defendant within a week from that day in

permitting to receive the documents. Before marking the documents, the plaintiff filed two applications in I.A.No.289 of 2015 and I.A.No.291 of 2015 to reopen, receive the documents and recall of PW1 to exhibit the documents. So far as the receiving of documents is concerned, it is not a new document, but the certified copy of the Xerox copy of mutation certificate issued by the Tahsildar concerned; the said Xerox copy was already filed in I.A.No.946 of 2015. The recall of PW1 sought is to exhibit the documents including the proposed certified copy of the already filed Xerox copy of the certification by the Tahsildar. Since the interlocutory applications in I.A.Nos.289 and 291 of 2015 are ended in dismissal, aggrieved of the same the present Civil Revision Petitions are filed.

3. Heard the learned counsel for petitioner-plaintiff and taken as heard the respondent, since served, failed to attend. Perused the material on record.

4. So far as the recall of witness is concerned, as per the very reading of Order XVIII Rule 17 C.P.C, it is not the right of party, but the power of Court where it is necessary for the effective disposal of *lis* or otherwise to sub-serve the ends of justice, to recall any witness after the evidence of both sides

or otherwise to clarify any ambiguity of evidence or to permit any further evidence, as the case may be, and instead of putting the question by Court, the Court may permit within its power any party to put any question to the extent permissible.

5. The Apex Court in *Vadiraj Naggappa Vernekar (deceased by L.Rs.) v. Sharad Chand Prabhakar Gogate*¹, particularly referring to para 16, the provision Order XVIII Rule 17 C.P.C. is not meant to fill up the lacunas for the lack of earlier diligence, if any, to invoke to the prejudice of the other party, but for only where the Court after evidence of both sides felt any necessity of pronouncements an effective verdict recall of any witness to put any questions by the Court and not otherwise, is not in dispute, but for to say, as referred in another expression of this Court in *Badana Mutyalamma and another v. Palli Appala Raju*², by subsequent expression of *K.K.Velusamy v. N.Palanisamy*³ and *Rama Rati v. Mange Ram (D) thr. L.Rs. and others*⁴, that as per Order XVIII Rule 17 C.P.C., it is not the right of the party but the power of the Court to sub-serve the ends of justice if at all to invoke irrespective of Court can allow even

¹ AIR 2009 SC 1604

² 2017 (5) ALT 69

³ (2011) 11 SCC 275

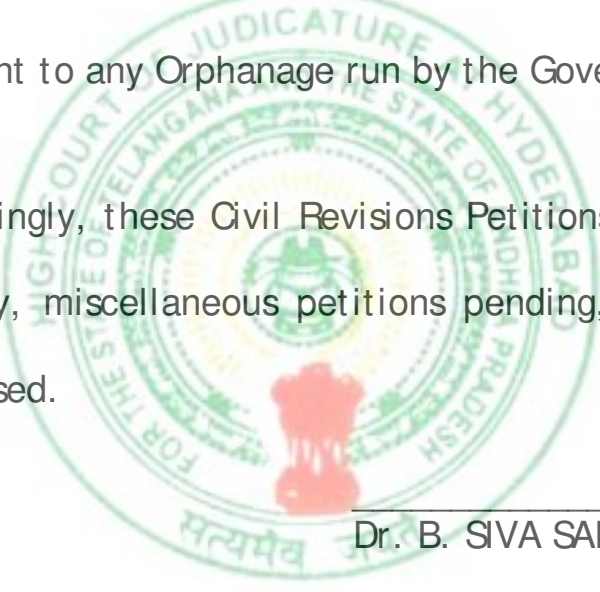
⁴ 2016 (3) ALD 162 (SC)

application moved by the party where it feels to sub serve the ends of justice and any recall of any witness is necessary and not otherwise. It is clearly held in the expressions of the Apex Court reiterated in B.Mutyalamma supra that this provision is introduced with the basic purpose postulated to enable the Court to clarify any position or doubt and the Court may either suo motu or on the request of the party, recall any witness at any stage and this can be exercised that any stage of the suit and once Court recalls the witness for purpose of any such clarification or otherwise, the Court may permit the parties to assist the Court by examining the witness for said purpose. However, it is not to fill up the lacunas or gaps, much less to the prejudice of the other side.

6. Having regard to the above, once these documents are allowed and are necessary in support of the suit claim, in the suit for specific performance, claiming the possession pursuant to the contract for sale, which is the revenue record, the trial Court should have been permitted the recall within the scope of law at best, subject to costs and the dismissal of interlocutory application including the application to receive the document, the Xerox copy of which was already filed, and now the application is only to receive the certified copy of it since unsustainable, the dismissal orders are set aside by

allowing the applications in I.A.No.289 of 2015 and I.A.No.291 of 2015 for receiving of documents and permitting recalling of PW1 for further examination, subject to costs of Rs.2,000/- (Rupees two thousand only) payable by the plaintiff to defendant within a week from the date of receipt of a copy of the order. If the said amount is received in the open Court, the Administrative Officer of the Court concerned shall pay the same to the defendant and obtain acknowledgment, and if the defendant failed to receive the said amount, the same should be sent to any Orphanage run by the Government.

Accordingly, these Civil Revisions Petitions are allowed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.



Dr. B. SIVA SANKARA RAO, J

21.12.2017
MVA