

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.5950 AND 5954 OF 2016

COMMON ORDER

O.S.No.199 of 2009 on the file of the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, was filed by the petitioners in these two revision petitions for partition and separate possession of their 2/6th share in the suit schedule properties; to declare the sale deed bearing Document No.5329 of 1995 dated 31.03.1995 as null and void; and for a permanent injunction. I.A.No.2847 of 2016 was filed by them in the said suit under Section 151 C.P.C. to reopen their evidence while I.A.No.2848 of 2016 was filed to permit them to lead further evidence in the case. By separate orders dated 15.11.2016, the trial Court dismissed both I.A.s. Aggrieved thereby, the petitioners/plaintiffs are before this Court. C.R.P.No.5950 of 2016 relates to the order passed in I.A.No.2848 of 2016 while C.R.P.No.5954 of 2016 arises out of the order passed in I.A.No.2847 of 2016 filed in the suit.

Heard the learned counsel for the parties. Parties shall be referred to hereinafter as arrayed in the suit.

Perusal of the separate orders passed by the trial Court reflects that the evidence of the plaintiffs was closed on 24.11.2015 and the defendants' evidence stood closed on 01.04.2016. The suit was thereafter adjourned for arguments but at that stage, it was reopened at the behest of the plaintiffs. P.W.1 was thereupon recalled for further evidence and Exs.A21 to A25 were marked by him on 04.08.2016. The plaintiffs also sought amendment of their pleadings which was allowed on 02.08.2016. Arguments were then heard and the suit was reserved for judgment on 06.09.2016. It was *suo motu*

reopened on 27.09.2016 for further arguments. At that stage, the subject applications were filed on 31.10.2016 for reopening the suit so as to enable the plaintiffs to adduce further evidence. The plaintiffs' plea was that the maternal uncle of the first plaintiff was not examined at the relevant point of time as he had gone to Punjab to purchase she-buffaloes and that they now wished to examine him so as to prove the marriage of first plaintiff's parents. The trial Court however held against the plaintiffs on the ground that their evidence was closed as long back as in November, 2015; that there was no indication as to when the maternal uncle of the first plaintiff returned; that in the meanwhile, the suit had been reopened for further examination of P.W.1, the first plaintiff; and that amendment of their pleadings was also allowed. The trial Court specifically observed that between 07.06.2016 and 04.08.2016, the suit underwent more than half-a-dozen adjournments. In the light of these irrefutable facts, the trial Court opined that ample opportunity had already been given to the plaintiffs to adduce their evidence and there was no merit in their again asking for reopening of the suit for further evidence. It was on the strength of this reasoning that the trial Court dismissed both the I.A.s.

Learned counsel for the plaintiffs placed reliance on ***BADANA MUTYALAMMA V/s. PALLI APPALA RAJU***¹. However, this judgment is of no avail to the plaintiffs as this Court merely observed that the basic purpose of Order 18 Rule 17 C.P.C. is to enable the Court to clarify any position or doubt and the exercise thereunder may either be *suo motu* or on the request of a party. These observations were made in the context of re-calling a witness for further examination.

¹ 2016 (6) ALD 510

On the other hand, learned counsel for the defendants pressed into service the judgment of the Supreme Court in **K.K.VELUSAMY V/s. N.PALANISAMY**² wherein, while observing that the rigour under Order 18 Rule 17 C.P.C. does not affect the inherent powers of the Court to reopen the evidence for the purpose of further examination or cross-examination or even for production of fresh evidence to meet the ends of justice, the Supreme Court summarized that if there is a time gap between the completion of evidence and hearing of arguments, for whatever reason, and if in the interregnum, a party comes across some evidence which he could not lay his hands on earlier or some evidence in regard to the conduct or action of the other party comes into existence, the Court may, in exercise of its inherent power under Section 151 C.P.C., permit production of such evidence if it is relevant and necessary in the interest of justice. This legal position was affirmed thereafter by the Supreme Court in **RAM RATI V/s. MANGE RAM**³.

Viewed in the backdrop of the aforestated legal position, this Court finds that in the present case, there is no explanation forthcoming from the plaintiffs as to why they failed to examine the maternal uncle of the first plaintiff earlier. Significantly there is no indication as to when he returned from Punjab. As already stated *supra*, the evidence of the plaintiffs was closed in November, 2015 and of the defendants in April, 2016. Though the suit was posted for arguments, it was reopened for further examination of P.W.1, which took place in August, 2016. The plaintiffs also amended their pleadings at that time. The suit was reserved for judgment in September, 2016 and reopened *suo motu* for further arguments.

² (2011) 11 SCC 275

³ 2016 SCC Online SC 249

This being the trajectory of the suit proceedings, this Court finds merit in the finding of the trial Court that the present applications filed by the plaintiffs were utterly lacking in *bonafides*. Their present attempt to reopen the suit for their further evidence at this belated stage does not fall under the protective umbrella adumbrated by the Supreme Court in **K.K.VELUSAMY²**. The orders under revision therefore do not brook interference on any ground.

The revision petitions are devoid of merit and are accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

17th FEBRUARY, 2017

PGS

SANJAY KUMAR, J

