

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4603 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, filed by the unsuccessful petitioners/defendants 1 and 3 is directed against the common order, dated 20.07.2017, of the learned XIV Additional Chief Judge, (Judge, FTC), City Civil Court, Hyderabad, insofar as it related to the dismissal of I.A.No.442 of 2017 in O.S.No.541 of 2008 filed for recalling PW1 for cross-examination by the said defendants.

2. I have heard the submissions of *Sri Sunil B.Ganu*, learned counsel appearing for the revision petitioners/defendants 1 and 3 ("Defendants 1 and 3", for brevity), and of *Sri G.Arun*, learned counsel appearing for the 1st respondent/plaintiff ("plaintiff", for brevity). I have perused the material record.

3. In a suit for declaration and possession in respect of plaintiff schedule immovable properties filed by the plaintiff against the defendants, the defendants 1 and 3 filed a written statement-cum-counter claim resisting the suit of the plaintiff and seeking the reliefs of declaration etcetera as mentioned in their counter claim. When the trial in the suit is in progress and when the suit is coming for adduction of evidence of the other defendants, defendants 1 and 3 filed the subject application, for recalling PW1 for further cross-examination. The said application was resisted by the plaintiff by filing counter. On merits and by the common order impugned in this revision, the trial court dismissed the said application and also

another application filed for reopening the evidence of PW1 for cross-examination. Hence, the defendants 1 and 3 are before this Court.

4. The case of the defendants 1 and 3 in support of their request afore-stated, in brief, is as follows: “The 1st defendant was examined as DW1. During the cross-examination of DW1, the plaintiff has put some questions relating to the litigation pending before the Courts at Nagaur and Ajmer of Rajasthan State. Subsequently, the defendants 1 and 3 obtained certified copies related to the Court proceedings pending in the said Courts to clear the confusion created in the cross-examination of DW1 and exhibited as exhibits B8 to B10, the certified copies of the said documents relating to the proceedings pending before the Courts at Rajasthan. Afterwards, the cross-examination of DW1 was completed. At the time of cross-examination of PW1 by the defendants 1 and 3, neither the plaintiff mentioned anything about the said litigations nor were the documents related to the cases pending in the Courts in Rajasthan State produced. Hence, the counsel for the defendants 1 and 3 could not cross-examine PW1 on those aspects. For the first time, the documents related to the proceedings pending in the Courts at Rajasthan were filed into Court during the cross-examination of DW1. Therefore, it is necessary to recall PW1 for further cross-examination on the aspects related to the proceedings pending before the Courts at Rajasthan as well as the matters with respect to the plaint schedule property.”

5. Per contra, the case of the 1st respondent/plaintiff, in brief, is as follows: “The petition is filed as an afterthought to protract the proceedings. The defendants 1 and 3 are guilty of suppression of legal proceedings pending in the Courts at Nagaur and Ajmer of the

State of Rajasthan, as they have not mentioned about the said litigation in their written statement-cum-counter claim filed subsequent to the filing of the said suits in the courts at Rajasthan. The legal proceedings in the Courts at Rajasthan have nothing to do with the subject matter of the present suit. The said legal proceedings in the Courts at Rajasthan are initiated as a counter blast to the present suit of the plaintiff. Therefore, the DW1 was accordingly cross-examined on the aspects of the pending litigations in the Courts at Rajasthan and the relevant documents are already exhibited. Hence, the petition is liable to be dismissed.”

6. Learned counsel for both sides advanced arguments in line with the respective cases of the parties, which are stated supra, in detail.

7. Learned counsel for the defendants 1 and 3 would further submit as follows: “Though DW1 has stated in his cross-examination that the litigations pending in the Courts at Rajasthan have nothing to do with the present suit proceedings, the said aspect also has to be ascertained from the plaintiff as the admission of DW1 is alone not sufficient. Hence, it is necessary to recall and cross-examine PW1 on the said aspect and other connected matters. It is for the trial Court to weigh the evidence of the plaintiff as well as of the defendants and arrive at a just conclusion as to whether the said litigations pending in the Courts at Rajasthan have anything to do with the present *lis*. Hence, recalling PW1 for the purpose of further cross-examination is essential.”

8. Learned counsel for the plaintiff/1st respondent while bringing to the notice of this Court the admissions of DW1 in his cross-examination, would contend that the present petition and the other

petition for reopening the evidence are filed not for just eliciting information with regard to the litigations pending in the Courts at Rajasthan but also to further cross-examine PW1 with respect to matters related to the present suit schedule property and the said purpose is, therefore, intended to fill up the lacunae in the evidence and that except stating that PW1 is to be cross-examined on the related matters, nothing else is stated in the affidavit filed in support of the petition and that the trial Court is justified in dismissing both the petitions of the defendants 1 and 3.

9. In reply, the learned counsel for the defendants 1 and 3 alternatively submits that in case the revision is allowed, this Court may confine the cross-examination of PW1 to the aspects covered by the litigations pending in the Courts at Rajasthan, as it is essential to elicit as to whether the litigations pending in the Courts at Rajasthan and the subject matters of the said litigations have anything to do with the subject matter of the present *lis*. If necessary, the defendants 1 and 3 may be precluded from cross-examining PW1 on other matters connected or related to the present suit, since PW1 was already cross-examined.

10. I have given earnest and thoughtful consideration to the facts and submissions.

11. It is discernable from the facts and submissions that DW1 was cross-examined by the learned counsel for the plaintiff about the litigations pending before the Courts at Nagaur and Ajmer of Rajasthan State. Thereafter, certified copies of the documents related to the litigations in the said courts were obtained and the certified copies of the pleadings etcetera related to the said

suits/litigations pending in the Courts at Rajasthan are exhibited as Ex.B8 to B10. The said aspect is not in dispute. In the evidence, DW1 fairly stated that the litigations pending in the Courts at Nagaur and Ajmer have nothing to do with the present suit and its subject matter. The request of the defendants to recall PW1 is only for the purpose of cross-examining her with regard to the litigations pending in the Courts at Nagaur and Ajmer of Rajasthan State and to ascertain from her as to whether the said litigations in the said Courts in the other state have anything to do with the present *lis* and the subject matter of the present *lis*. PW1 has already stated in the counter filed in the interlocutory application that the suits and legal proceedings in the Courts at Nagaur and Ajmer of Rajasthan State have nothing to do with the present *lis*. Even in the cross-examination of DW1 done on behalf of the plaintiff, when a suggestion was given with regard to the litigations pending in the Courts of Rajasthan State, DW1 stated verbatim as follows: 'It is true that the proceedings of the Rajasthan Court and the properties at Rajasthan are nothing to do with the present suit.' Thus, it is the case of the plaintiff that the proceedings of the cases in the Courts at Rajasthan and the properties at Rajasthan have nothing to do with the subject matter of the present suit and the *lis* covered by the instant suit. Therefore, it is borne out by record that the plaintiff is also saying that the litigations pending in the Courts at Nagaur and Ajmeer of Rajasthan State and the properties at Rajasthan have nothing to do with the instant suit and also the subject matter of the instant suit; and, the defendants 1 and 3 are also asserting the same thing. Therefore, when the facts borne out by the record lay bare that the litigations pending in the Courts at Rajasthan have nothing

to do with the subject matter of the present suit and the instant *lis*, in the considered view of this Court and as rightly observed by the trial court, there is no necessity to recall PW1 to elicit the same information, which is already the admitted case of both the plaintiff and the defendants 1 and 3.

12. On the above analysis, this Court finds that the petition filed to recall PW1 for the purpose of further cross-examination on the afore-stated aspects is misconceived and is liable for dismissal and that, therefore, the common order of the trial Court insofar as it related to the dismissal of the said petition does not brook interference.

13. The Civil Revision Petition is accordingly dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

September 12, 2017
Lm v

JUSTICE M.SEETHARAMA MURTI

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI



CIVIL REVISION PETITION Nos.4603 of 2017

12-09-2017