

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.3354 and 3414 of 2011

COMMON ORDER:

These Civil Revision Petitions are filed by the petitioner/ plaintiff under Article 227 of Constitution of India, challenging the orders, dated 18-07-2011 passed in I.A.Nos.522 and 523 of 2011 in O.S.No.158 of 2009 by the Junior Civil Judge, Jangareddygudem declining to accord permission to the petitioner to reopen and recall the evidence of PW-3.

The petitioner filed the suit for specific performance and examined PWs.1 and 2. PW-3 is one of the attestors who filed an affidavit under Order XVIII Rule 4 (1) of Code of Civil Procedure in lieu of examination in chief, specifically asserting that the defendant signed on the agreement of sale in his presence having received consideration. PW-3 also stated in his affidavit that one Vandanapu Appa Rao was also present and he also signed on the agreement of sale, after signing by the defendant on the agreement of sale. But, PW-3 in his cross-examination stated as follows:

“In my presence no consideration was passed under the aforesaid sale agreement dt.29.1.1990 to the defendant. The defendant did not put his signature in my presence in the aforesaid sale agreement. One Smt.Yasoda Satyavenkata Naga Sarada never executed any document in my

presence and that and she never received any cash consideration in my presence.”

As the witness did not support the case of the petitioner and totally supported the case of the defendant, the counsel for the petitioner has to re-examine the witness to explain the discrepancy in the evidence in chief and cross-examination, which I extracted in the earlier paragraph.

It is the contention of the respondent that the petitioner did not obtain such permission on the date of cross-examination of witness but filed the present petition only to protract the proceedings for some more time and when he did not seek permission of the Court to re-examine the witness the petitioner is not entitled to re-call the witness for cross-examination.

The trial Court in its order found that after hearing arguments of both the counsel PW-3 was examined in chief and cross-examination was also concluded and that there was no discrepancy, found in the evidence of PW-3.

Aggrieved by the order passed by the trial Court the present Civil Revision Petition is filed on various grounds. During the hearing Sri Sai Gangadhar Chamarty, learned counsel for the petitioner drawn the attention of this Court to the discrepancy which I extracted out in the earlier paragraphs and contended that to explain the discrepancy in

the examination in chief and cross-examination, PW-3 is required to be cross-examined by the counsel for the petitioner i.e., his own witness.

Learned counsel for the respondent opposed the petition on the ground that it is nothing but dragging the matter for some more time though it is a matter of 2009.

Section 137 of the Indian Evidence Act, 1872 deals types of examinations, the examination of a witness by the party who calls him shall be called his examination-in-chief, the examination of a witness by the adverse party shall be called his cross-examination and the examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination and fix order of examination under Section 138 of the Indian Evidence Act, 1872. Under the same provision a direction of re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon the matter. Therefore, by virtue of Section 138 of the Indian Evidence Act, 1872 the petitioner can be permitted to re-examine the witness to clarify any discrepancy in the evidence after obtaining necessary permission from the Court but not cross-examination of his own witness. When the witness was declared hostile at the instance of counsel examined the

witness in chief, he can be allowed to cross-examine his own witness, which furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony.

In view of the judgment of the Hon'ble Apex Court in ***State of Rajasthan v. Bhawani and another***¹, Section 154 of the Indian Evidence Act, 1872 permits the Court to grant permission to the counsel to examine his own witness in its discretion but such power has to be exercised cautiously when the witness was declared as hostile by the counsel who examined such witness.

In the present case, the witness was not declared as hostile immediately after examination for the simple reason that the witness supported the case of the plaintiff in examination in chief but in cross-examination supported the defendant's case. In such case it is difficult for the counsel to declare the witness as hostile. If no permission is granted to cross-examine the witness denying to refuting the testimony of the witness PW-3 herein by cross-examination it would

¹ (2003) 7 SCC 291

amount to admission and affects seriously the case of the plaintiff. Merely because the petitioner has not obtained permission immediately on the date of cross-examination would not disentitle him to claim permission subsequent to closure of cross-examination. When the witness resiled from his previous statement i.e., his statement in the examination in chief and testified totally contra to the examination in chief on material aspects the petitioner can seek permission to cross-examine his own witness with the permission of the Court in view of Section 154 of Evidence Act. But the trial Court instead of deciding whether permission can be granted to cross-examine the witness, recorded a finding that there is no discrepancy in examination in chief and the cross-examination of PW3 to cross-examine his own witness, as pointed out by me the discrepancy in the examination in chief and cross-examination, which is totally contrary to the previous statement regarding execution of document and receiving consideration by the executant in his presence. Obviously, for different reasons the trial Court on erroneous consideration of the examination in chief and cross-examination, came to the conclusion that there is no discrepancy, therefore, the finding of the trial Court is erroneous but the trial Court did not consider whether there are grounds to grant permission or not.

As seen from the material on record, there is any amount of discrepancy with regard to the material aspects of execution of Ex.A-1 and passing of consideration thereunder, such discrepancy shall be rebutted or explained by cross-examining his own witness otherwise, it amount to admission. If no such permission is granted it would affect the case of the petitioner seriously with regard to execution of Ex.A-1. Therefore, I find that it is a fit case to grant permission to cross-examine PW-3 (his own witness) only to the extent of discrepancy, which I pointed out in the earlier paragraphs and for the said purpose the witness has to be recalled by exercising the power under Order VIII Rule 17 of Code of Civil Procedure.

However, as the matter relates to '2009', the trial Court is directed to record cross-examination of PW-3 within a month from the date of receipt of a copy of this order.

With the above direction, these Civil Revision Petitions are allowed. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

June 07, 2017

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