

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5571 of 2016

ORDER:

1) Assailing the order, dated 16.09.2016 passed in I.A.No.758 of 2016 in O.S.No.102 of 2010 on the file of the Additional Senior Civil Judge, Chittoor, wherein an application filed under Order XVIII Rule 17 read with Section 151 of C.P.C. to recall PW.1 for further cross-examination was dismissed, the present Civil Revision Petition is filed.

2) The facts in issue are as under:

The respondent herein filed O.S.No.102 of 2010 seeking declaration of title over the plaint schedule property and also granting permanent injunction restraining the petitioner herein, his men and agents in any manner in interfering with his possession; and to declare the registered sale deed dated 29.11.2006 executed by the respondent in favour of the petitioner, a nominal document, as security for the loan amount. In the said suit, issues were framed and PWs.1 to 3 were examined on behalf of the respondent/ plaintiff. When the suit is posted for petitioner/ defendant's evidence, the petitioner herein filed an application seeking to recall PW.1 stating that in the cross examination of PWs.2 and 3 several new facts came to light with regard to their residence and the said facts are relevant and important to defend his case.

3) A counter came to be filed opposing the same. It is stated in the counter that when the suit is posted for defendant's evidence, the present application is filed only to drag on the matter.

4) After considering the rival submissions made by both the parties, the trial Court dismissed the said application. Challenging the same the present Civil Revision Petition is filed.

5) Learned counsel for the petitioner mainly submits that in the cross examination of PWs.2 and 3 several new facts with regard to their residence came to light, which establish that PW.1 has suppressed real facts and filed a false suit. He further submits that since the said facts are not within his knowledge at the time of cross-examination of PW.1, the present petition is filed to recall PW.1 for further cross examination.

6) Learned counsel for the respondent would submit that earlier the petitioner filed I.A.No.658 of 2015 to recall PW.1 which was allowed. He further submits that new facts which the petitioner intend to elicit may not be any help to him and only to drag the proceedings, the present petition came to be filed.

7) In *Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate*¹ the Apex Court while dealing with the provision under Order XVIII Rule 17 of C.P.C. held as under:

“Though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the

¹ (2009) 4 SCC 410

said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

8) In *M/s. Bagai Construction through its Proprietor v. M/s. Gupta Building Material Store*² the Apex Court held as under:

“After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by argument and decision thereon within a reasonable time. This Court has

² AIR 2013 SC 1849

repeatedly held that court should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered.”

9) A perusal of the material on record would show that PW.1 was examined way back on 18.03.2015 and his cross-examination was completed on 23.11.2015. PWs.2 and 3 were examined on 08.06.2016 and 11.07.2016 respectively. In his chief examination PW.2 stated that he is tenant of the plaintiff and he is continuing to pay rents and even now he is residing in southern portion, whereas PW.3 is tenant in the northern portion of the building. PW.3 is using the said portion as a godown. PW.2 admitted in cross-examination that since three months prior to his evidence, he started residing in a house at Ramanaiahgaripalli, which was allotted to him under Indiramma Scheme. He denied the suggestion that he never resided in the schedule property, as a tenant, at any point of time. He also denied the suggestion that PW.3 is not residing in northern portion of the schedule property. PW.3 also stated in his cross-examination that he was allotted a house under Indiramma Scheme. He denied the suggestion that he never lived as tenant in the suit schedule property. The said facts were stated by PW.1 in his chief-examination itself. Therefore, there is no need to recall PW.1 to cross-examine him on those

aspects. These issues cannot be called as “new facts” warranting recall of PW.1 at this stage.

10) For the aforesaid reasons and in view of the judgments referred to above, I see no reasons to interfere with the order passed by the trial Court.

11) Accordingly, the Civil Revision Petition is dismissed. As the suit is of the year 2010, the trial Court is directed to dispose of the said suit as early as possible, preferably, within a period of four (04) months from the date of receipt of a copy of the order.

There shall be no order as to costs.

12) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

07.02.2017
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JUSTICE C. PRAVEEN KUMAR



