

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.6224 OF 2017

ORDER:

Order, dated 10.10.2017, in I.A.No.251 of 2017 in O.S.No.210 of 2004, passed by the Additional Senior Civil Judge, Anantapuramu, refusing to recall the D.W.1 for the purpose of cross-examination, is challenged before this Court.

2) The facts in brief are that the revision petitioner is defendant No.2 in the suit filed by the plaintiff-respondent No.1 seeking declaration of title and injunction with regard to plaint schedule property. The petitioner is the purchaser of the property from defendant No.1. Defendant No.1 filed the Written Statement, which was adopted by the 2nd defendant-petitioner and the Defendant No.6 remained *ex parte*. After completion of the plaintiff's side evidence, on behalf of defendant Nos.1 and 3 to 6, defendant No.4 has been examined as D.W.1. The chief-examination of D.W.1 (D4) was completed and thereafter, the plaintiff completed the cross-examination of D.W.1 on 22.02.2017. At that stage, the present Application is filed stating that the petitioner has not been given an opportunity to cross-examine D.W.1. The Court below having considered the respective submissions dismissed the said Application.

3) Heard the learned counsel for the petitioner.

4) As can be seen from the material on record, the Court below had taken into consideration the relative prejudice that may be caused to the parties. The Court also had taken into consideration the fact that the 2nd defendant i.e., the petitioner had adopted the written statement of the 1st defendant and, as a matter of fact,

D.W.1, who has been introduced as a witness, is for and on behalf of defendants 1 to 6. Inasmuch as, the stand of the petitioner in all respects being the same as that of the 1st defendant and once a witness has been examined on behalf of the 1st defendant, if the petitioner-2nd defendant seeks to cross-examine him, he ought to have exercised his right at the earliest point of time, at any rate, before he has cross-examined by the plaintiff. Inasmuch as, the petitioner has not done so, he cannot seek to cross-examine D.W.1 after completion of the cross-examination by the plaintiff. The Court below had taken into consideration the law declared by this Court in **Gottumukkala Venakta Krishna Raju and others Vs. Bhupathiraju Jayalakshmi**¹. There being no error in the order under revision, the Civil Revision Petition does not merit any consideration and accordingly the same is liable to be dismissed.

5) In those circumstances, the Civil Revision Petition is dismissed. There shall be no order as to costs.

6) Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J

17th November, 2017.

Ssv

¹ 1988 (1) ALT 171