

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.620 of 2018

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 28.12.2017 passed in I.A.No.794 of 2017 in O.S.No.385 of 2012 on the file of the Court of the Principal Junior Civil Judge, Chittoor.

2 In spite of service of notice, the respondent did not choose to appear and oppose the petition. Hence this court is inclined to pass orders on merits. Heard the learned counsel for the petitioner.

3 A perusal of the record reveals that the first respondent filed I.A.No.794 of 2017 under Order XVIII Rule 17 r/w Section 151 CPC to recall P.Ws.1 and 2 for further cross examination. The petitioners filed counter *inter alia* contending that the first respondent is sailing with the second respondent who is plaintiff in the suit; therefore, it is not a fit case to recall P.Ws.1 and 2 for further cross examination. The trial court after affording reasonable opportunity to both parties, allowed the petition. Hence the present Civil Revision Petition.

4 The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order, warranting interference of this Court?

5 A perusal of the record reveals that the second respondent filed O.S.No.385 of 2012 on the file of the Court of the Principal Junior Civil Judge, Chittoor against the petitioners and the first

respondent seeking perpetual injunction in respect of the suit schedule property. After completion of evidence on plaintiff's side, the first respondent filed I.A.No.794 of 2017 under Order XVIII Rule 17 r/w Section 151 CPC to recall P.Ws.1 and 2 for further cross examination. In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to extract the impugned order hereunder:

“Heard. Perused the records. Considering the circumstances submitted in the affidavit, this Court allowed petition with condition.

In the result petition is allowed with condition that on the date of adjournment they cross examine P.W.1 and P.W.2. Otherwise petition stands dismissed.”

6 A perusal of the impugned order clearly reveals that the trial court has not assigned addressed the ilssues raised by the petitioners in the counter. It is the case of the petitioners that the first respondent who is defendant No.1 in the suit is sailing with the second respondent / plaintiff. When the petitioners have taken a specific stand in the counter, the Court ought to have given a specific finding on that aspect. The trial court simply allowed the petition without assigning any reasons, much less valid reasons. The very purpose of the cross-examination of witness is to elicit truth. Some times the parties may file application to recall the witness under the guise of further cross examination in order to overcome the laches or to fill up the lacunae if any on their part. For the reasons best known to him, the first respondent did not choose to cross examine P.Ws.1 and 2. After cross examination of P.Ws.1 and 2 by the petitioners who are defendant Nos.2 and 3, the first respondent filed the present petition. In such

circumstances, the possibility of filling up the lacunae, if any, on the part of the second respondent through the first respondent cannot be ruled out completely.

7 If the order of the trial court is allowed to stand, certainly, it would amount to miscarriage of justice. The first respondent has not shown any reason much less valid reason for recalling P.Ws.1 and 2. If the petition is allowed, it may cause prejudice to the petitioners who are the contesting defendants in the suit.

8 Having regard to the facts and circumstances of the case, this court is of the considered view that this is a fit case to allow the Civil Revision Petition by setting aside the impugned order.

9 In the result, the Civil Revision Petition is allowed. The order dated 28.12.2017 passed in I.A.No.794 of 2017 in O.S.No.385 of 2012 on the file of the Court of the Principal Junior Civil Judge, Chittoor is hereby set aside. Consequently I.A.No.794 of 2017 stands dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Dt: 05.10.2018

Kvsn/