

**In the High Court of Judicature at Hyderabad
For the State of Telangana and the State of Andhra Pradesh**

CIVIL REVISION PETITION No. 1624 of 2018

Between:

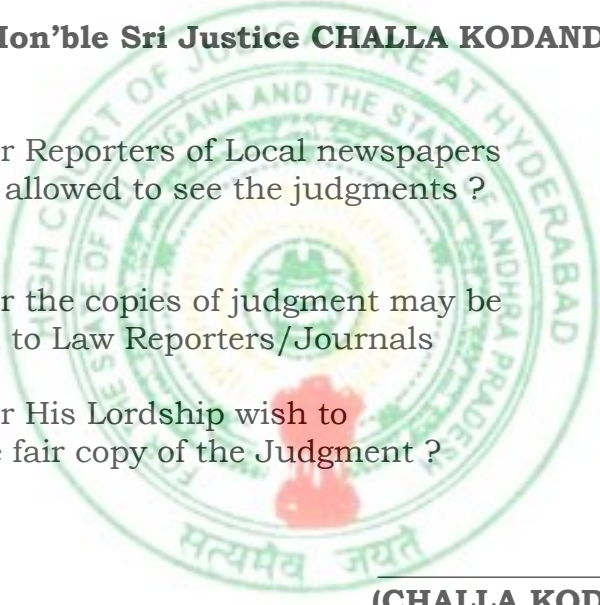
A. Rama Mohan Reddy & others
and
... Petitioners

A. Vijaya Kumar & another
... Respondents

Date of Judgment Pronounced: 28-09-2018

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wish to see the fair copy of the Judgment ? Yes/No

(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**

CIVIL REVISION PETITION No. 1624 OF 2018

% Dated 28.09.2018

Between:

A. Rama Mohan Reddy & others

... Petitioners

and

A. Vijaya Kumar & another

...Respondents

! Counsel for the petitioners : Sri P. Narahari Babu

^ Counsel for the respondents: Sri A. Hanumanth Reddy

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? Cases cited:

1. AIR 1981 P H 157



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 1624 OF 2018

ORDER :

This Revision is directed against the order dated 24.01.2018, whereby and whereunder the learned Senior Civil Judge at Penukonda allowed I.A. No. 17 of 2018 in O.S. No. 38 of 2007, taken out by the respondents – plaintiffs to recall P.W.5 for further examination to prove Ex.A10.

Petitioners herein are the defendants against whom the respondents – plaintiffs filed the above said suit seeking declaration of their right over the suit property. During the course of examination, when Ex.A10 – permanent Khararu Dasthaveju was confronted to D.W.1, he denied the signature thereon. The case of the respondents is that P.W.5 is one of the attestors of Ex.A10, but he was not confronted with the said document due to oversight, at the time of his examination. Hence, it became necessary to recall P.W.5. The trial Court, on finding that Ex.A10 was not confronted to P.W.5 by the respondents-plaintiffs, due to oversight, opined that filing of the aforesaid I.A. cannot be said to be malice and hence, allowed the same by the order under Revision.

Learned counsel for the petitioners submits that the evidence of the respective parties was closed and at the stage of arguments, the respondents – plaintiffs filed the present I.A. under Order 18 Rule 17 of the Code which is impermissible in law.

Learned counsel for the respondents vehemently opposes the Revision. Placing reliance on the judgment of Punjab & Haryana

High Court in ***O.Prakash v. Sarupa***¹, learned counsel submits that the Court has ample power to recall the witness. According to her, for the mistake on the part of the counsel, the respondents – plaintiffs’ cause cannot be put to jeopardy. The learned counsel further submits that as per the provisions of Section 47 of the Indian Evidence Act, 1872, it is absolutely necessary to prove a document. In support of her contentions, the learned counsel also places reliance on the judgment of this Court in A.S. No. 294 of 1930 (***Suryanarayana v. Achamma***).

It is to be borne in mind that the Civil Procedure Code prescribes the method and manner of conducting trial of the cases and in particular, the order of production of witnesses and leading of evidence. Though there is a provision for examination-in-chief, cross-examination and thereafter, re-examination, the provision contained under Order 18 Rule 17 CPC is an exception to allow recalling of witness for cross-examination.

Order 18 Rule 17 reads as under:

“ Court may recall and examine witness:- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

If one examines Order 18 Rule 17, one would find that the discretion of the Court to recall a witness, who was examined earlier and put such questions to him as the Court deems fit, is limited; in the sense, firstly, if the Court seeks any clarification, such power is to be exercised, which means that the same is not available to the parties to the proceedings; secondly, recall of a witness for re-examination is subject to the Law of Evidence for the time being in force. So far as the examination of witnesses under

¹ AIR 1981 P H 157

the Indian Evidence Act is concerned, it may be noted, the same is governed by the provisions of Section 135, 136, 137 and 138 thereof.

Admittedly, the suit is at the stage of arguments. The reason stated in the affidavit filed in support of the present Application by plaintiff No.2 was that Ex.A10 was executed by the defendants in the presence of his father and other witnesses and one of the attestors is P.W.5, but he was not confronted with the said document by mistake and oversight. It was further stated that since D.W.1 had denied execution of the same and appending his signature thereon, in his cross-examination, it had become necessary to recall P.W.5, as it is an extremely important piece of evidence supporting the claim of the plaintiffs. It is only by inadvertence, P.W.5 was not confronted with the document and as such, it had become necessary for the plaintiffs to seek recall of P.W.5 for the limited purpose, as stated above.

The case of the petitioners in the I.A., as can be seen from the above, is that, Ex.A10 document is of great importance to prove their case. The fact that Ex.A10 and its contents are required to be proved is evident from the pleadings and submissions of the respondents-plaintiffs. In other words, in the assessment and judgment of the respondents, there is a gap in the evidence with respect to Ex.A10 which requires to be bridged.

In this factual backdrop, the question which requires to be considered is 'Is it permissible for a Court to recall a plaintiffs' witness, on an Application, that too, at the stage of arguments, to fill-in a gap in the evidence and whether the provisions of Order 18 Rule 17 CPC permits such exercise'.

As noticed supra, Order 18 Rule 17 is hedged with a condition that recall of a witness is permissible subject to the provisions of the Indian Evidence Act. The method and manner, the sequence of examination of a witness i.e., examination-in-chief, cross-examination and re-examination is governed by Sections 135, 136, 137 and 138 of the said Act. It may be noted that Law of Evidence is a substantive one and the CPC being a procedural law, the same is required to be in conformity with the substantive law. Order 18 Rule 17 makes it clear that recalling of a witness is circumscribed by the provisions of the Evidence Act. It may also be noted that the Evidence Act, by itself, does not use the word 'recalling of a witness' except for re-examination. In other words, recalling of a witness, as provided under Order 18 Rule 17 is required to be understood as recalling of a witness for re-examination which should be in conformity with the provisions of the Evidence Act.

In those circumstances, the recalling of witness at the instance of the plaintiffs, that too, after completion of the evidence of the defendants and when the matter is listed for arguments, to fill-up a gap, being impermissible, the order under Revision, allowing recall of a witness suffers from irregularity.

The Civil Revision Petition is hence, allowed, setting aside the order dated 24.01.2018 in I.A. No. 17 of 2018 in O.S. No. 38 of 2007 on the file of the Court of the Senior Civil Judge at Penukonda. No costs.

Consequently, the miscellaneous Applications, if any stand closed.

CHALLA KODANDA RAM, J

