

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2053 OF 2018

ORDER:

This civil revision petition is filed by the petitioners-defendants, under Article 227 of the Constitution of India, assailing the order dated 22.12.2017 passed in I.A.No.443 of 2017 in O.S. No.90 of 2012 on the file of the Court of Principal Junior Civil Judge, at Gadwal.

2. Heard the learned counsel for both the parties.

3. The respondents filed O.S.No.90 of 2012 on the file of the Court of Principal Junior Civil Judge, at Gadwal, against the petitioners for declaration and consequential perpetual injunction in respect of the suit schedule property. After closure of the evidence on both sides, the petitioners filed I.A.No.443 of 2017 under Order XVIII Rule 17 read with Section 151 of CPC to recall P.W.2 for further cross-examination. The trial Court, after affording reasonable opportunity to both parties, dismissed the petitioner. Hence, the revision.

4. To substantiate the arguments, learned counsel for the petitioners has drawn the attention of this Court to the decision in **Adaka Peda Anjaiah v Yanamadala Sessaiah**¹. Relevant portion in paragraph No.9 reads as follows:

(vii) Where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issues and will assist in rendering justice, and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion and if does so, it would ensure that the process does not become a protracting tactics. The Court should firstly award

¹ 2017(1) ALD 570

appropriate costs to the other party to compensate for the delay. Secondly, the Court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

5. Let me consider the facts of the case on hand in the light of the above legal principle.

6. The respondents filed the suit to declare the registered sale deed No.1986/2004, dated 23.6.2004 as null and void, and consequential perpetual injunction in respect of the suit schedule property. P.W.2 was examined on behalf of the respondents-plaintiffs. The petitioners cross-examined P.W.2 at length. During the cross-examination, P.W.2 denied the suggestion that he sold an extent of Acs.3.29 guntas in survey No.408 to second petitioner-defendant No.2 through registered sale deed No.8650/2008, dated 01.10.2008. At the time of arguments, learned counsel for the petitioners submitted that by mistake the trial Court Advocate wrongly mentioned the dated of sale deed as '01.10.2008' instead of '13.10.2006'. It is the case of the petitioners that P.W.2 sold the property to the second petitioner under a registered sale deed dated 13.10.2006. The said document was marked as Ex.B.24.

7. The present petition is filed to recall P.W.2 for the purpose of showing Ex.B.24 to him. It is not in dispute that the respondents have not filed the suit against P.W.2 for declaration of the sale deed dated 13.10.2006 as null and void. The property covered under Ex.B.24 is not the subject matter of the suit. Whether P.W.2 is speaking truth or false will be considered by the trial Court at the appropriate stage. If this Court expresses any opinion with regard to credibility of the testimony of P.W.2, the same may

cause prejudice to one of the parties to the suit. It is needless to say that while deciding the interlocutory applications, the Court shall not express any opinion touching the merits of the main case. The trial Court made an observation that in view of marking of Ex.B.24, there is no need to recall P.W.2. Even if P.W.2 is recalled for further cross-examination, his testimony will not throw any light on the controversy involved in the suit. As observed earlier, the credibility of a witness will be decided by the trial Court at the appropriate stage. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. The decision cited by the learned counsel for the petitioners is no way helpful to the petitioners. There is no illegality or irregularity in the impugned order, warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 20.7.2018
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