

THE HON'BLE SRI JUSTICE N.BALAYOGI
CIVIL REVISION PETITION Nos. 3142 of 2016 and
3619 of 2016

COMMON ORDER:

The Counsel for respondents/plaintiffs in C.R.P.No.3142 of 2016 takes notice in Civil Revision Petition No. 3619 of 2016.

2. Since these Civil Revision Petitions are arose on the common order dated:29.04.2016 in I.A.Nos.260 of 2016 and 261 of 2016 in O.S.No.550 of 2009 on the file of the Court of the Principal Junior Civil Judge, Ananthapuramu and the petitioner is one and the same in both the petitions, they are heard together and disposed of by a common order.

3. The petitioner/defendant filed both the Civil Revision Petitions against the common orders passed in I.A.Nos.260 of 2016 and 261 of 2016 in O.S.No.550 of 2009 by the Principal Junior Civil Judge, Ananthapuramu.

I.A.No.260 of 2016 is filed to reopen the evidence of plaintiff for the- purpose of cross examination of P.W.1 and I.A.No.261 of 2016 is filed to recall P.W.1 for the purpose of cross examination. Aggrieved by the common order dated 29.04.2016, dismissing both the I.A.s, the petitioner/defendant filed these Civil Revision Petitions.

4. The contention of the petitioner is that, the Trial Court ought to have seen that the Suit is for declaration of title and injunction and in the cases of this nature, the endeavour of the Court is always to decide the cases on merits. The lower Court ought to have seen that in the absence of cross examination of plaintiff witnesses, examination of

witnesses of defendants is a futile exercise on the part of the defendants. As such, the Trial Court ought to have afforded another opportunity to the petitioner/defendant for cross examination of P.W.1 in view of change of his Counsel.

5. The contention of the petitioner in both the petitions is that the suit is posted on 05.11.2015 for cross examination of P.W.1 on costs of Rs.100/-. But on that day the petitioner could not come to the Court due to fever and to instruct his Counsel to take time for cross examination. But the Trial Court has closed the cross examination of P.W.1. The further contention of the petitioner is that he has got good case and lot of facts have to be elicited from P.W.1. Non-payment of costs and non-appearance before the Trial Court, on that day, is neither intentional nor wilful.

6. The respondents/plaintiffs filed counter in both the I.As contending that on that day i.e., on 05.11.2015, the petitioner could not come to the Court due to fever and to instruct his Advocate to take time for cross examination. The contention of the petitioner / defendant that due to his ill-health, he could not attend the Court and instruct the Counsel to take time for cross examination of P.W.1 and non-payment of costs and non-appearing before the Hon'ble Court on that day is neither intentional nor wilful but for the reasons beyond his control, are all false and incorrect.

7. Now, the point that arises for consideration is :

“Whether the order of the Trial Court suffers from any infirmity warranting interference of this Court?.”

The learned counsel for the petitioner submits that since the suit is filed for declaration of title and injunction, the petitioner/defendant should have given an opportunity of cross examination of P.W.1.

Per contra, the Counsel for respondents / plaintiffs contend that in spite of giving ample opportunity they could not cross examine P.W.1 and adduce the evidence and trying to protract the litigation.

In fact, respondents / plaintiffs filed the suit for declaration of title and injunction and in the impugned order, it is clear that the respondents / plaintiffs filed Chief Affidavit of P.W.1 on 24.11.2014. On several occasions, the case was adjourned for cross examination of P.W.1 till 09.09.2015, from which date the suit was adjourned for cross examination on imposition of costs of Rs.100/-.

8. Again thereafter, the case was adjourned on 06.10.2015 and 14.10.2015 on imposition of costs for cross examination of P.W.1 and posted the matter to 05.11.2015. On 05.11.2015 also costs imposed. Thereafter, the costs were not paid by the petitioner and there is no representation on his behalf to cross examine the P.W.1. As such, the cross examination of P.W.1 is closed. The reason assigned for non-appearance of defendant / petitioner on that day is that he was suffering from fever and could not attend the Court and request his Counsel to take time to cross examine P.W.1.

9. The settled law is that in civil matters when a party appears through an Advocate, there is no need for the party to appear in person on each and every date of hearing. The Counsel can attend the Court and represent the matter on behalf of the party. But it was not done so in the present case.

10. During the course of arguments, the petitioner's Counsel submitted that due to lapses on the part of earlier Counsel and lack of correspondence between the petitioner and earlier Counsel, there is no proper action on the part of the petitioner. Now, the petitioner changed his Counsel and the Counsel is ready to proceed with the case.

11. Having considered the above facts and circumstances, I am of the considered view that since it is a suit for declaration of title and injunction, another opportunity should be given to the petitioner to cross examine the P.W.1 and other witnesses, if any, by the petitioner. However, considering the fact that Chief Affidavit of P.W.1 is filed on 24.11.2014 and in spite of adjourning the matter for cross examination of P.W.1 and imposed costs thrice, though one year elapsed till closing the cross examination of P.W.1 on 05.11.2015, I feel to meet the hands of justice, exemplary costs to be imposed.

12. Accordingly, two Civil Revision Petition Nos.3142 of 2016 and 3619 of 2016 are allowed while setting aside the common order dated 29.04.2016 in I.A.Nos.260 of 2016 and 261 of 2016 in O.S.No.550 of 2009 on a condition that the petitioner shall deposit Rs.10,000/- to the credit of O.S.No.550 of 2009, payable to the plaintiffs on or before 30.04.2018, since petitioner's counsel represented that the suit is posted for that day for pronouncement of judgment.

13. Since the suit is of the year 2009, the Trial Court is directed to dispose of the suit as expeditiously as possible.

JUSTICE N. BALAYOGI

Dated:26-04-2018

JR (Issue cc tomorrow)

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Dated:26-04-2018

JR

