

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.2190, 2267 & 2401 OF 2018

Date: 23.04.2018

CRP No.2190 of 2018:

Between:

Bollam Thirupathi, s/o. late Venkatrajam,
Aged 31 years, occu: Agriculture,
r/o. Dharmasagar village and mandal,
Warangal distrit.

.....Petitioner/ plaintiff

and

Meerpally Sagar, S/o. Chandramouli,
Aged 38 years, occu: Pvt. Employee,
R/o. Pegadapally village, Hasanparthy Mandal,
Warangal District, T.S.,

.....Respondent/defendant



The Court made the following:

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COMMON ORDER:

Petitioner is plaintiff. Plaintiff filed O.S.No.1604 of 2012 pending on the file of Court of Principal Junior Civil Judge at Warangal. Suit is instituted to grant decree of permanent injunction in favour of plaintiff restraining the defendant and his agents from interfering into peaceful possession and enjoyment of plaintiff over the suit land. Plaintiff claims that he is owner and in possession of land to an extent of Ac.0.30 guntas in Sy.No.1115/B of Dharmasagar village and mandal, Warangal district, having purchased the same through registered sale deed bearing document No.1989 of 2012 from Vadhiloju Sudhakrishna. On purchase of said property, possession was delivered and plaintiff is in peaceful possession and enjoyment of said property. While so, plaintiff alleges that defendant, who is stranger to the suit schedule property, trying to grab the schedule property and frequently interfering to dispossess the plaintiff and, therefore, sought protection against illegal dispossession. In the plaint, under the heading of list of documents, the registered sale deed through which plaintiff claimed to have purchased the property is the only document mentioned.

2. In the written statement, defendant denied the allegation of interference in peaceful possession and enjoyment of plaintiff. According to defendant, suit schedule land is part of land to an extent of Ac.4.32 guntas and father of plaintiff and defendant are the joint owners of said property. Defendant alleges that alleged

sale deed relied upon by plaintiff is created and brought into existence with the collusion of vendor, who is no way concerned with the said property. By 09.03.2018, evidence on both sides was closed and case was directed to be listed on 21.03.2018 for arguments. At this stage, plaintiff filed I.A.Nos.592, 593 and 594 of 2018 in the above suit praying to reopen the evidence of plaintiff, to recall P.W.1/plaintiff and to receive documents shown in the list enclosed to the petition, respectively. Petitions were considered and by orders, against which these revisions are filed, learned Prl.Junior Civil Judge, Warangal refused to grant reliefs and dismissed the petitions.

3. Trial Court observed that suit is coming up for arguments and the present petitions are filed at belated stage and that pleadings do not disclose the reasons for filing those documents at this stage when there are no pleadings regarding those documents in the plaint and affidavits do not disclose as to in whose possession those documents were lying. Having found no *bona fides*, trial Court was not inclined to accept the plea of plaintiff.

4. Heard learned counsel for plaintiff.

5. The question for consideration is whether trial Court erred in not accepting the plea of plaintiff to recall P.W.1, to reopen evidence of plaintiff and to receive documents.

6. On bare perusal of affidavits filed in respective applications before trial Court, it is seen that affidavits do not disclose the relevancy of documents now sought to be presented, how these documents were secured; whether these documents were in his

possession; if not in whose possession those documents were kept; and when those documents were secured. Thus, bald affidavits are filed praying to recall P.W.1, to reopen the case of plaintiff further examination of P.w.1 and to receive the documents. Along with revisions also, list of documents which was sought to be presented before the trial Court is not filed. In the affidavits filed in support of applications filed in these revisions also do not disclose the nature of documents sought to be presented and their relevancy. A bald assertion is made in paragraph-3 of said affidavit that during cross-examination of DW.1, he was put to specific questions on the documents sought to be marked, but at that time they are photocopies or copies down loaded from the internet and subsequently they were obtained from concerned authorities under the Right to Information Act. At this stage also, the deponent do not disclose the relevancy of those documents to the issue involved and why these documents could not be secured earlier.

7. It is to be noted that suit is filed for grant of perpetual injunction against defendant from interference. In a suit for perpetual injunction, two ingredients required to be fulfilled by plaintiff are: 1) *prima facie* title to the property in issue and 2) possession as on date of institution of the suit. Thus, plaintiff has to explain how documents now sought to be marked are relevant to grant perpetual injunction. The burden is heavy on him when he sought to mark these documents after evidence was closed.

8. At this stage, it is appropriate to consider the observations of Hon'ble Supreme Court on the scope of discretion available to trial Court in allowing new evidence.

9. In **Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate**¹, Supreme Court held that Order XVIII, Rule 17 C.P.C., is not intended to be used to fill up omissions in the evidence of witness, who is already examined. Facts in the said case some what similar to the facts of this case. In the said case also no new facts have been discovered subsequently, which were not within the knowledge of the party when the affidavit evidence was filed. The Hon'ble Supreme Court held as under:

“28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

(30) xxxxxx

31. Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it ultimately within the court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

10.1. The scope of power of trial Court in resorting to provision under Order XVIII Rule 17 read with Section 151 of CPC was considered by the Supreme Court in **K.K.Velusamy v.**

¹ (2009) 4 SCC 410

N.Palanisamy². Supreme Court observed that though Order XVIII Rule 17 enables the Court, at any stage of the suit, to recall any witness, who was already examined and to put such question as it thinks fit, but should be exercised sparingly, in appropriate cases, to meet the ends of justice, should not be allowed to be used to abuse process of law and to protract the litigation.

10.2. Supreme Court has delineated various issues that require consideration in exercise of power under section 151 CPC. Supreme Court cautioned that provision under section 151 CPC cannot be routinely invoked for reopening the evidence or recalling the witnesses and should be used only to secure the ends of justice and to prevent abuse of its process; that the availability of power under Section 151 CPC is coextensive and may be used where the remedy or procedure is not provided in CPC. It is complementary; that since no guidelines are prescribed in CPC, such power should be exercised in exercise of sound discretion and the wisdom of the Court and in given facts and circumstances of the case, which would have to be used with circumspection and care. It is not intended to be used to fill up omissions in the evidence of a witness who was already been examined.

10.3. Supreme Court further observed as under:

“14 But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence

² (2011) 11 SCC 275

if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

11. In **Bagai Construction v. Gupta Building Material Store**³, the plaintiff sought to introduce the documents which were in his possession all along. The earlier decision in **K.K.Velusamy** was considered. Supreme Court observed as under:

“15. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly.”

12. The principle deducible from these decisions is, discretionary power vested in Order XVIII Rule 17 read with Section 151 CPC or independently under Section 151 should be exercised sparingly and such applications filed belatedly should be accepted only for compelling reasons and on sufficient justification being shown. The *bona fides* of the party which seek to introduce the documents should be considered and cannot be allowed in a routine manner.

13. No satisfactory explanation is furnished for not marking these documents when evidence of plaintiff was recorded. Plaintiff do not assert that some new facts are discovered by the plaintiff in the recent past, which has bearing on the proceedings of the suit. No satisfactory explanation is given for moving the IAs after closer of evidence. In other words, it is not the case of plaintiff that new facts/documents are discovered subsequently by him which were not within his knowledge/possession earlier. *Prima facie*, the

³ (2013) 14 SCC 1

plaintiff lacks *bona fides* in filing the IAs and the efforts appears to be to drag on the litigation. Plaintiff is guilty of wilful laches and negligence. Applications filed by the plaintiff are in abuse of the process of the Court.

14. It is opt to note the observations of Supreme Court in recent judgement in **Gayathri v. M.Girish**⁴, which read as under:

“16. ... We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita “Awake ! Arise ! Oh Partha! is apt here to be stated for guidance of trial courts.”

15. This Court do not see any perversity in the orders of trial Court in I.A.Nos.592, 593 and 594 of 2018 in O.S.No.1604 of 2012. The trial Court has come to correct conclusion in dismissing the IAs. The Civil Revision Petitions are dismissed. However, it is made clear that observations made herein above are only for the purpose of disposal of instant CRPs and shall have no bearing on the merits of the claim in the suit. All pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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⁴ 2016 SCC Online SC 744

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