

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2794 OF 2011

ORDER:

This revision petition is filed under Article 227 of the Constitution of India questioning the order dated 16.06.2011 in I.A.No.442 of 2011 in O.S.No.144 of 2000 passed by the I Additional Chief Judge, City Civil Court, Hyderabad, allowing the petition to recall PW.1-Bimal for further cross examination .

Respondents 1 and 2/Defendant Nos.7 and 1 filed petition under Order XVIII Rule 17 read with Section 151 C.P.C. alleging that certain documents were not marked through PW.1. During cross examination, counsel for respondents 1 and 2 wanted to point out the false documents produced by PW.1 in respect of demolition and interest created in favour of third party in 'A' schedule property, learned counsel for petitioners/plaintiffs took objection stating that PW.1 was recalled only for marking documents and cross examination must be confined to what he stated in examination in chief only. PW.1 filed affidavit regarding demolition and interest created in favour of the third party in 'A' schedule property (Ajanta Talkies). Therefore, it becomes necessary to recall PW.1 to confront him with the documents filed in I.A.No.382 of 2008.

The petitioners/plaintiffs filed counter mainly contending that respondents 1 and 2 intend to mark documents filed in I.A.No.382 of 2008, the same must be marked by DW.2 only and that the said documents are not relevant to issue involved in the suit for partition and therefore, the question of recalling PW.1 does not arise for limited purpose and prayed for dismissal of the petition.

The Court below after considering the material available on record, allowed the petition on payment of costs of Rs.200/-. Aggrieved by the impugned order, the present revision petition is filed on various grounds mainly contending that when a petition was filed to confront documents in view of objection raised by the counsel, again recalling the same witness does not arise and apart from that those documents shall be marked through DW.2, who is concerned with the documents. Therefore, the Court below committed an error in allowing the petition and prayed to set aside the impugned order.

During hearing, learned counsel for the petitioners reiterated the contentions raised in the affidavit while agreeing that it is discretionary power of the Court under Order XVIII Rule 17 C.P.C. and that the Court below did not exercise its jurisdiction judiciously and prayed to allow the revision petition.

Counsel for the respondents supported the impugned order in all respects.

Considering rival contentions of both counsel and material available on record, the point that arises for consideration is:

“Whether recall of PW.1 for marking documents filed along with I.A.No.382 of 2008 is permissible, if not, the impugned order is liable to be set aside?”

The respondents filed certain documents along with I.A.No.382 of 2008, but the same cannot create any ground to recall PW.1 for limited purpose, in view of objection raised by learned counsel for the petitioners before the Court below and that those documents can be marked through DW.2 and confronting those documents through PW.1 is of no use. In such a case, the Court can exercise such discretion under Order XVIII Rule 17 C.P.C. to permit the parties to bring on record the entire evidence to decide the real issue involved in the matter.

An identical question came up before the Apex Court in **Ram Rati vs Mange Ram (D) Through LRs. And others**¹ The Apex Court relying on earlier judgment in **K.K.Velusamy v N.Palanisamy** ² it was held that the power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in

¹ 2016(11) SCC 296

² (2011) 11 SCC 275

the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of Court. According to Guidelines (a) to (f) laid down in **K.K.Velusamy's** case referred supra, such power can be exercised when recall of witness would not cause prejudice except cause of minimum delay in dispose of the petition and moreover, it is appropriate to bring all the facts on record to decide the matter in accordance with law. But this Court exercise its jurisdiction in judicious manner enabling the parties to bring the entire evidence on record exercising power under Order XVIII Rule 17 C.P.C, which is purely a discretionary in nature, in view of later judgment in **Vide Vadiraj Naggappa Vernekar (D) Through LRs v Sharad Chand Prabhakar Gogate**³ . Therefore, when the Court below decided the petition by exercising its discretion under Order XVIII Rule 17 C.P.C., this Court would not normally venture to interfere with such order unless the Court finds error or perversity in the impugned order. In the present case, the Court below with a view to afford reasonable opportunity to confront the documents to the witness exercised power rightly and such order cannot be interfered while exercising power under Article 227 of the Constitution of India since the jurisdiction of this Court is limited and this Court can interfere with such an order when there is perversity or grave error in the order

³ 2009(4) SCC 410

transgressing its jurisdictional limits, in view of the judgment in **Raj Kumar Bhatia v Subhash Chandra Bhatia**⁴.

In the present case, though learned counsel for the petitioners contended that the impugned order was passed in not exercising discretion judiciously. But on perusal of the material on record, the Court below allowed the petition exercising its jurisdiction within its limits. Therefore, I find no grounds warranting interference of this Court under Article 227 of the Constitution of India by applying principles laid down in the above judgments and the revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. However, the I Additional Chief Judge, City Civil Court, Hyderabad is directed to dispose of the suit as expeditiously as possible. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

26.02.2018
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⁴ 2018(2) SCC 87 (FB)