

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**CRP.No.5477 of 2015**

**ORDER :**

This revision petition is filed questioning the order dated 29.11.2015 in IA.No.453 of 2013 in OS.No.25 of 2003 passed by the Senior Civil Judge, Piler, Chittoor.

OS.No.25 of 2003 is a suit filed for declaration of title to the plaint schedule property and also for a declaration that the sale deed executed therein is void and for other reliefs.

PW.1 was examined and Exs.A.1 to A.5 were marked. On 08.09.2014 as the defendant and his counsel did not appear, the right to cross-examine PW.1 was forfeited. At that stage, only Exs.A.1 to A.5 were marked. Later, IA.No.587 of 2014 was filed and by order dated 10.11.2014, the plaintiff marked Exs.A.6 to A.11. Since the right of the defendants to cross-examine the witness on Exs.A.1 to A.5 were forfeited, the defendants were permitted to cross-examine the witness only with regard to Exs.A.6 to A.11.

Thereafter, in 2015, two applications IA.Nos.452 of 2015 and 453 of 2015 were filed to set aside the order dated 08.09.2014. The impugned order came to be passed by which the Court permitted the cross-examination by setting aside the order dated 08.09.2014. Challenging the same the present revision was filed.

This Court has heard Sri B.Sudhakar Reddy and Neeraja Reddy, learned counsel for the petitioners and Sri A.P.Reddy, learned counsel for the respondents.

The learned counsel for the revision petitioners submits that against the order dated 08.09.2014; initially an application was filed bearing IA.No.462 of 2014. This application is filed in the paper book. The deponent therein, who is the first defendant prayed the Court to set aside the forfeiture order passed on 08.09.2014 and sought permission to cross-examine PW.1. The said application was dismissed on 22.09.2014. A copy of the order is also filed in the paper book. The learned counsel submits that once an application was filed in IA.No.462 of 2014 to set aside the order dated 08.09.2014 and the same was dismissed, a subsequent application does not lie. He, therefore, submits that the Court below committed an error in taking on file IA.Nos.452 and 453 of 2015 and thereafter, allowing the same. It is his contention that the order in IA.No.462 of 2014 has become final and therefore, the subsequent application does not lie.

In reply thereto, learned counsel for the respondent submits that the impugned order is correct. He states that rules of natural justice required for his client to be given an opportunity to examine the witness, particularly as the suit is for a declaration of title. He points out that for the failure of the counsel, the party should not suffer. This submission is

made because it was pointed out that the affidavit filed in the first application to set aside order dated 08.09.2014 (IA.No.462 of 2014) is absolutely identical to the application filed in 2015 (IA.No.453 of 2015). The counsel submits that the advocate in the Court below made a mistake in not filing a proper affidavit explaining the need for cross-examination the witness about Exs.A.1 to A.5 and that an identical application was filed in September, 2014 and later in September, 2015. He, therefore, submits that an opportunity must be granted.

This Court after hearing both the learned counsels notices that the order that was passed on 08.09.2014 forfeited the right of the defendant to cross-examine PW.1. By that time on 08.09.2014, Exs.A.1 to A.5 alone were marked. Immediately, on 08.09.2014 itself, an application was filed by the defendant (IA.No.462 of 2014) seeking an opportunity to cross examine the witness. The affidavit was affirmed on 08.09.2014, notice was also served on the opposite side counsel/counsel for the plaintiff on 08.09.2014. This application, which is filed on 08.09.2014, was dismissed on 22.09.2014.

The record also reveals that the plaintiff has filed IA.No.587 of 2014 to receive some additional documents. This application IA.No.587 of 2014 was allowed on 10.11.2014. Pursuant to this order, Exs.A.6 to A.11 were marked. The counsel for the defendants/present revision

petitioners was given an opportunity to cross-examine only with regard to Exs. A.6 to A.11 in view of the earlier order passed on 22.09.2014, dismissing IA.No.462 of 2014.

Thereafter, in September, 2015, the applications which are considered in the present impugned order were filed. Unfortunately, the counsel did not care to explain why there is a need to cross-examine the witness with regard to Exs.A.1 to A.5. He merely copied and printed another set of affidavits which are absolutely identical to the earlier affidavits and filed the same into the Court. Absolutely no explanation was forthcoming of the need to cross-examine the witness on Exs.A.1 to A.5 or of the subsequent order that is passed for marking Exs.A.6 to A.11. Even the mistakes in both the applications are identical. It clearly shows that the counsel did not pay any attention whatsoever to the applications filed in IA.No.462 of 2014 or IA.No.453 of 2015. Applications and supporting affidavits should be carefully drafted but the same was not done in this case. The deponent in both these affidavits has signed in Telugu and as can be seen from para 1 of the affidavit, he is aged 61 years and he is living by cultivation.

This Court is of the opinion that in those circumstances of the case, the revision petitioners should be given an opportunity to cross-examine the witness particularly with regard to Exs.A.1 to A.5. Although, this Court dis-agrees with

certain portions of order passed by the lower Court, still the Court notices the fact that the lower Court held that the act of a Court should not harm a party and thereafter gave the opportunity.

This Court also notices that the application to set aside the order dated 08.09.2014 (IA.No.462 of 2014) was affirmed and filed on 08.09.2014 itself. The docket order dated 08.09.2014 is at page 36 of the material papers. It shows that the Court kept aside the matter till 2.30 p.m. and later called the case at 2.50 p.m. after lunch. At that point of time, the counsel for the defendants did not turn up. Therefore, his right was forfeited. The record also reveals that the affidavit in support of IA.No.462 of 2014 is affirmed on 08.09.2014 and notice is also served on counsel on 08.09.2014, it is clear that immediately steps were taken after 2.50 p.m. on 08.09.2014 to file an application. Thus, the *bona fides* of the petitioners are established. In spite of this, the Court passed the order dated 22.09.2014 dismissing the application only on the ground that even at 2.30 p.m. the counsel did not turn up.

To compound this issue, the learned counsel, who drafted the affidavit did not pay much attention. The events that transpire are not correctly mentioned, he also did not make specific averments in the affidavit of the need to cross-

examine the witnesses further, particularly, about the documents- Exs.A.1 to A.5.

Considering all the above, this Court is of the opinion that the party should not suffer for the mistake committed by the counsel or by the Court.

In the peculiar facts and circumstances of this case, this Court is of the opinion that the impugned order is correct. An opportunity should be given to the respondents in the revision petition to cross-examine the witness on Exs.A.1 to A.5.

The ultimate purpose of the Court is to render justice. Rules of procedure are the hand maidens of justice. Since issues of title etc., are involved, this Court is of the opinion that an opportunity should be given to the respondents herein to cross-examine the witness with regard to Exs.A.1 to A.5.

As the suit is of the year 2003, the Court is directed to complete this exercise within a period of two months from the date of receipt of a copy of this order. All requests for adjournments must be dealt with very strictly and in accordance with law.

With these observations, civil revision petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.

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D.V.S.S.SOMAYAJULU, J

Date: 31.12.2018  
KLP

