

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3943 of 2018

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 29.06.2018 passed in I.A.No.161 of 2018 in O.S.No.170 of 2016 (Old No.15 of 2009) on the file of the Telangana State Wakf Tribunal, Hyderabad.

2 Heard the learned counsel for both the parties.

3 A perusal of the record reveals that the petitioner filed the suit O.S.No.170 of 2016 (Old No.15 of 2009) on the file of the Telangana State Wakf Tribunal, Hyderabad against the respondent for eviction and recovery of possession. After completion of the petitioner's side evidence, the matter is coming up for respondent's side evidence. After completion of the evidence of D.W.1, the respondent filed a petition under Order XVIII Rule 17 CPC seeking to recall P.W.1 for further examination. The Tribunal, after affording reasonable opportunity to both parties, allowed the petition. Hence the present Civil Revision Petition.

4 The learned counsel for the petitioner submitted that the Tribunal, without taking into consideration the material available on record, allowed the petition on assumptions and presumptions. He further submitted that the order passed by the Tribunal is not sustainable either on facts or in law.

5 *Per contra*, the learned counsel for the respondent submitted that it is just and necessary to recall P.W.1 to cross examine him on the aspect of gift deed. He further submitted that no prejudice will be

caused to the petitioner even if he is recalled for the purpose of further examination.

6 Basing on the rival contentions, the point that arises for consideration in this Civil Revision Petition is whether there is any illegality, irregularity or impropriety in the impugned order, warranting interference of this court while exercising jurisdiction under Article 227 of the Constitution of India, or not?

7 To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this court to the following judgements:

K.K.Velusamy v. N. Palanisamy¹ wherein the Hon'ble apex Court held at para No.10 as follows:

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

Adaka Peda Anjaiah and another v. Yanamadala Seshiah² and ***Badana Mutyalamma vs. Palli Appala Raju***³ wherein this Court held that *the basic purpose postulated is to enable the court to clarify any position or doubt and the court may either suo*

¹ (2011) 11 SCC 275

² 2017 (1) ALD 570

³ 2017 (5) ALT 69

motu or on the request of the party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit.

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

9 The petitioner and the respondent are sons of late Mohammed Ahmed Sharief. It is the case of the petitioner that the petitioner is acting as Mutawalli of Masjid-e-Rahmania. The respondent is the tenant of the plaint schedule property. It is the case of the respondent that their father gifted the plaint schedule property in question in his favour. It is the contention of the petitioner that their father purchased the property in the name of the Trust. Whether late Mohammed Ahmed Sharief executed a gift deed in favour of the respondent or purchased the property in the name of the Trust has to be decided at the time of full fledged trial. If this Court expresses any opinion on this aspect, it may cause prejudice to one of the parties to the proceedings.

10 At the time of arguments, the learned counsel for the respondent submitted that the gift deed was not marked in the suit. The purpose for which the respondent filed the I.A.No.161 of 2018 is to recall P.W.1 to cross examine him with respect to the gift deed purported to have been executed by late Mohammed Ahmed Sharief in favour of the respondent. This fact is very much known to the respondent from the date of filing of the suit. The respondent did not take any steps to cross examine P.W.1 on this aspect. In the absence of gift deed, no purpose will be served by recalling P.W.1 for further cross examination.

11 In order to appreciate the contention of the learned counsel for the respondent, it is not out of place to extract the relevant portion of the order of the Tribunal, which reads as under:

“.....The counsel for the defendant should be given a fair opportunity to elicit the material facts from the witness to protect the right over the immovable property....”

12 The very purpose of filing the I.A is to recall P.W.1 for the purpose of further cross examination with regard to the gift deed. The Tribunal has not given a specific finding that P.W.1 was recalled for the purpose of cross examination in respect of the alleged gift deed. The Tribunal has not considered the scope of the affidavit filed by the respondent and allowed the petition as if it is filed to recall P.W.1 for the purpose of cross examination on certain material aspects. The findings recorded by the Tribunal have no basis. If the order passed by the Tribunal is allowed to stand, certainly, it would amount to miscarriage of justice.

13 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to allow the revision.

14 In the result, the Civil Revision Petition is allowed at the stage of admission, setting aside the order dated 29.06.2018 passed in I.A.No.161 of 2018. Consequently, I.A.No.161 of 2018 in O.S.No.170 of 2016 (Old No.15 of 2009) on the file of the Telangana State Wakf Tribunal, Hyderabad stands allowed. No order as to costs. Consequently, miscellaneous petitions if any pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 13.07.2018
Kvsn