

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3292 OF 2017

ORDER:

This civil revision petition is filed by the petitioners-defendants, under Article 227 of the Constitution of India, assailing the order dated 01.6.2017 passed in I.A.No.808 of 2016 in O.S. No.593 of 2008 on the file of the Court of Principal Senior Civil Judge, Kurnool.

2. Heard Sri A.Sudarshan Reddy, learned senior counsel appearing for Ms.Thota Suneetha, learned counsel for the petitioners and Sri E.V.V.S. Ravi Kumar, learned counsel for the respondents.

3. The respondents filed O.S. No.593 of 2008 against the petitioners for specific performance of agreement of sale dated 21.7.1993. After completion of the evidence on both sides, the trial Court posted the matter for arguments. At that stage, the respondents filed the interlocutory application under Section 151 of CPC to permit the respondents to let in further evidence. The trial Court, after affording reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. In order to resolve the issue, this Court is placing reliance on the following decisions:

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

¹ (2011) 11 SCC 275

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 motu, 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.

5. Let me consider the facts of the case on hand, in the light of the above legal principles.

6. It is not in dispute that in the year 2015 itself the matter was posted for arguments. As rightly pointed out by the learned counsel for the petitioners, the respondents have filed chief-examination affidavits of the proposed witnesses (P.Ws.13 to 16), without leave of the Court. The respondents are intending to place reliance on the oral testimony of the proposed witnesses to establish that the respondents have been in possession and enjoyment of the suit schedule property. It is not in dispute that as per the recitals of the agreement of sale dated 21.7.1993, the possession of the suit schedule property was delivered to the respondents and P.Ws.2 and 3 were examined to prove the same. It is the case of the respondents that the petitioners are highly influential persons; therefore, the proposed witnesses are very much afraid to come into witness box and depose the truth all these days. At the time of arguments, learned senior counsel for the petitioners submitted that the petitioners are Government Doctors and they worked in various parts of the composite State of Andhra Pradesh before attaining the age of superannuation. In such circumstances, it is not possible for the petitioners to threaten the proposed witnesses, who are the residents of Kurnool District. The possibility of taking this type of untenable pleas in

order to overcome latches on the part of respondents cannot be ruled out completely.

7. If the Court is of considered view that the issue involved in the suit cannot be adjudicated effectively without examining the proposed witnesses, then there may be some justification to allow the petition. This Court has carefully perused the affidavits of the proposed P.Ws.13 to 16. The testimony of these witnesses will not be helpful to resolve the issue involved in the suit. The respondents' side evidence was closed in the year 2015. For a period of one year, the respondents have not taken any steps to examine the proposed witnesses. The possibility of filing of this type of petitions to fill-up the lacunae on the part of the petitioners cannot be ruled out completely. The trial Court, without bestowing its attention on the above referred facts, allowed the petition on the sole ground that no prejudice will be caused to the respondents.

8. It is needless to say that once the matter has been posted for arguments, the party, who is intending to examine the witness on his behalf, ought to have filed the application for reopening the matter. A perusal of the record reveals that the petitioners have not filed any application to reopen the evidence. Another interesting aspect is that the petitioners filed the petition under Section 151 of CPC instead of quoting correct provision of law. The trial Court, without considering all the above aspects, simply allowed the petition on assumptions and presumptions. If the impugned order is allowed to stand, it would certainly cause prejudice to the respondents.

9. 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 the impugned order is liable to be set aside.

10. In the result, the civil revision petition is allowed, setting aside the order dated 01.6.2017 passed in I.A.No.808 of 2016. Consequently, I.A.No.808 of 2016 in O.S. No.593 of 2008 on the file of the Court of Principal Senior Civil Judge, Kurnool, stands dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

Date: 17.7.2018
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T.SUNIL CHOWDARY, J.

