

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4638 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 27.06.2018 passed in I.A.No.1010 of 2018 in O.S.No.653 of 2010 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel appearing for both the parties.

3. A perusal of the record reveals that the respondent filed O.S.No.653 of 2010 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad, against the petitioners for declaration, recovery of possession and damages in respect of an extent of 500 sq. yards bearing H.No.2-3-669, situated at Azad Nagar, Bagh Amberpet, Hyderabad. The petitioners filed I.A.No.1010 of 2018 under Section 151 CPC to reopen the suit for further cross-examination of P.W.1. The petitioners also filed I.A.No.1009 of 2018 under Order XVIII Rule 17 read with Section 151 CPC to recall P.W.1 for the purpose of cross-examination. The trial Court dismissed both the petitions after affording a reasonable opportunity to both parties. Hence, the revision.

4. Now, the point that arises for consideration is, whether there is any illegality, irregularity or impropriety in the impugned order?

5. To substantiate the argument, learned counsel for the petitioners has drawn the attention of this Court to the decision in ***K.K.VELUSAMY v. N. PALANISAMY***¹ wherein it was held at para Nos.15 and 22 as follows:

“15. The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. 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. The contention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognised with reference to exercise of power under Section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

22. In this case, we are satisfied that in the interests of justice and to prevent abuse of the process of court, the trial court ought to have considered whether it was necessary to reopen the evidence and if so, in what manner and to what extent further evidence should be permitted in exercise of its power under Section 151 of the Code. The court ought to have also considered whether it should straightaway recall

¹ (2011) 11 Supreme Court Cases 275

PW1 and PW 2 and permit the appellant to confront the said recorded evidence to the said witnesses or whether it should first receive such evidence by requiring its proof of its authenticity and only then permit it to be confronted to the witnesses (PW1 and PW2).”

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

7. It is not in dispute that the respondent filed the suit for declaration, recovery of possession and also for damages. It is also an admitted fact that the respondent filed O.S.No.3349 of 2009 against the petitioners in respect of the suit schedule property seeking perpetual injunction. The trial Court after full-fledged trial, dismissed the suit on 30.08.2011. A perusal of the record reveals that the petitioners herein have cross-examined P.W.1 (respondent herein) at length covering all aspects. I.A.No.1010 of 2018 and I.A.No.1009 of 2018 are filed to reopen the suit as well as to recall P.W.1 for the purpose of cross-examination with reference to the evidence deposed by him in O.S.No.3349 of 2009. As observed earlier, the petitioners are parties to O.S.No.3349 of 2009. The respondent herein was examined as P.W.1 in O.S.No.3349 of 2009 in the month of July 2010. These petitioners are very much aware of deposing of evidence by respondent in O.S.No.3349 of 2009.

8. Learned counsel for the petitioners has drawn the attention of this Court to the deposition of P.W.1 in

O.S.No.3349 of 2009. P.W.1 unequivocally deposed that he was not in possession of the suit schedule property. The respondent filed the suit for declaration as well as recovery of possession. This itself indicates that the respondent is not in possession of the property. There is no need to recall P.W.1 in order to establish that he was not in possession of the suit schedule property in view of the reliefs sought in this suit. The petitioners are very much aware about this fact from July 2010 onwards. For the reasons best known, the petitioners did not take any steps to recall P.W.1 till completion of their evidence.

9. I have carefully scanned the affidavit filed by the petitioners. The petitioners have not assigned any reasons much less cogent and valid reasons for non-filing of this petition for all these years. Learned counsel for the respondent submitted that the trial Court heard the matter on both sides and posted the same for judgment in the month of January 2018. Learned counsel for the petitioners submitted that the petitioners filed the present petition after completion of arguments by both sides. As per the decision cited supra, the Court can allow the applications filed under Section 151 CPC in exceptional cases only. As per the principle enunciated in the case cited supra, the Court can exercise its discretionary power basing on sound principle of law to prevent the abuse of process of law.

10. As observed earlier, the petitioners have not taken any steps to file the petitions for a period of nearly eight years. When the matter came up for arguments before the trial Court, the petitioners filed this petition. As observed earlier, the petitioners have not assigned reasons much less cogent and valid reasons for non-filing of this petitions at the earliest point of time or immediately after closure of P.W.1's evidence. The petitioners are very much aware that the respondent herein deposed evidence as P.W.1 in O.S.No.3349 of 2009 in the year 2010 itself. Had it been the case of the petitioners that recently they came to know about deposing of evidence by the respondent in O.S.No.3349 of 2009, there may be some justification in filing this petition. The possibility of filing of this petition at the fag end of the suit in order to protract the matter as far as possible cannot be ruled out completely. It is needless to say that a witness cannot be recalled in order to cover up the latches, if any, on his part. If the present petition is allowed, certainly it would amount to permitting the petitioners to cover up their latches, which is not permissible under law.

11. As rightly pointed out by the learned counsel for the respondent the Court has to exercise its discretionary power judiciously. In the instant case, if the petition is allowed it may cause untold hardship and prejudice to the respondent. Even if P.W.1 is not recalled, the petitioners can establish

their case so far as the factum of possession is concerned. It is needless to say that in a suit for declaration, the plaintiff may succeed or fail basing on the strength or weaknesses of his case. Ultimately, the respondent has to establish his case. The trial Court considered all these aspects in right perspective and dismissed the petition. The trial Court exercised its discretionary power judiciously basing on sound principle of law. This Court cannot lightly interfere with the discretionary orders passed by the trial Court, unless there is an error apparent on the face of it. The trial Court has not committed any error while dismissing the petition. I am fully endorsing the findings recorded by the trial court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the civil revision petition lacks merits and the same is liable to be dismissed.

12. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:13.08.2018

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