

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

CIVIL REVISION PETITION No. 4672 of 2018

Between:

D. Nagalakshmi

... Petitioner

and

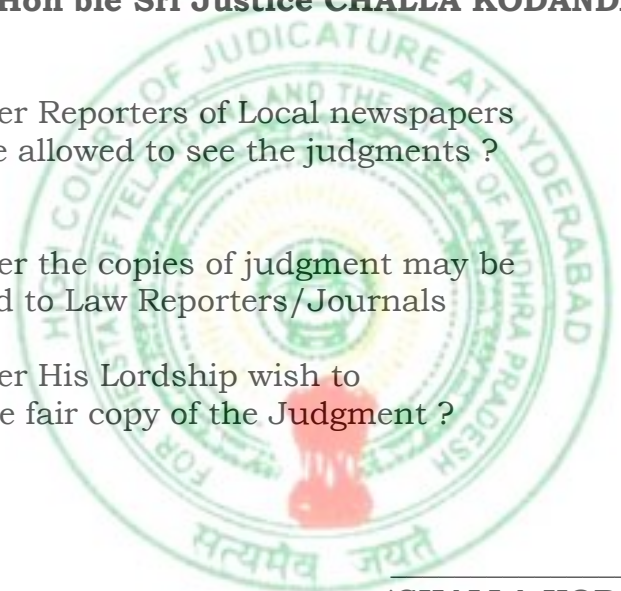
D. Rosamma & another

...Respondents

Date of Judgment Pronounced: 12-09-2018

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wish to see the fair copy of the Judgment ? Yes/No

(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**

CIVIL REVISION PETITION No. 4672 OF 2018

% Dated 12.09.2018

Between:

D. Nagalakshmi

... Petitioner

and

D. Rosamma & another

...Respondents

! Counsel for the petitioner : Sri N. Aswartha Narayana

^ Counsel for the respondent :

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>HEAD NOTE:

? Cases cited:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4672 OF 2018

ORDER :

This Revision is filed calling in question the Order dated 04.07.2018 in I.A.No. 489 of 2018 in O.S.No. 122 of 2010 on the file of the Principal Senior Civil Judge's Court at Ananthapuramu.

Petitioner herein is the 7th defendant in the above-said suit filed for partition and separate possession of the respondents – plaintiffs' 58th share in the plaint schedule property. The plaintiffs' side evidence was closed and on behalf of the defendants, D.Ws. 1 to 3 were examined. Ex.B1 Gift Deed and Ex.B2 Will executed by the father of the petitioner were marked. In other words, the petitioner is the profunder of the will. D.W.3, alleged to be the attesor of Ex.B2 Will, in the chief-examination, though admitted his signature appended on Exs.B1 and B2, feigned ignorance of the contents thereof, stating that he was not present at the time of their execution and attestation made by the first attesor. Sensing that D.W.3 was speaking against the interests of the petitioner, the learned counsel sought permission of the Court for his cross-examination, which was made extensively. Thereafter, the respondents-plaintiffs' counsel also cross-examined D.W.3. His evidence was closed on 30.04.2018. It is at that stage, the petitioner has taken out the instant Application, on 13.06.2018, to recall D.W.3. In the affidavit filed in support thereof, it is stated that by mistake and due to pressure of work, some important questions regarding alteration of documents and the circumstances under which he turned hostile could not be put to D.W.3. Opposing the said Application, the respondents filed the

counter. Considering the rival pleas, the learned Senior Civil Judge dismissed the Application, *vide* Order under revision.

Heard learned counsel for the petitioner, who places reliance on the judgment of the Supreme Court in **K.K. Velusamy v. N. Palanisamy** (Civil Appeal Nos. 2795-2796 of 2011).

The question that arises for consideration, in the facts and circumstances of the case, is whether refusal of the Application is valid and just and in the process of refusing, the Court had exercised the discretion vested in it in a proper way?

At the outset, it may be noted that Exs.B1 and B2 were marked at the instance of the petitioner. In other words, the burden to prove the same is on the petitioner. While it is the case of the petitioner that the only surviving attestor of Exs.B1 and B2 being D.W.3, to prove the said documents, he was summoned, however, D.W.3 turned hostile and deposed against the petitioner. At the time of examination-in-chief, the petitioner's counsel realised that as the witness was speaking against his client's interests, he thought it appropriate to treat him hostile and sought permission of the Court for cross-examination. Merely because D.W.3 did not support the case of the petitioner, in the manner in which he desires, the same cannot be a reason for recalling the witness. The two reasons stated in the affidavit filed in support of the Petition would hardly justify, as the second reason is general and the first one that by inadvertence, some important questions regarding attestation of the documents were not put to the witness, cannot be a ground at all. The counsel ought to have been diligent and careful while cross-examining D.W.3. Though the learned counsel for the petitioner submits that there was some element of lacunae, a perusal of the deposition of D.W.3 discloses that the

cross-examination was done extensively. Virtually, all possible suggestions including with regard to imputation of D.W.3 having some financial dealings with the plaintiffs was also made. As D.W.3, *prima facie*, stood his ground, the petitioner appears to have come up with the present Application. The evidence of D.W.3 has to be relied upon or not is the matter which requires consideration at the time of arguments.

Coming to the judgment of the Supreme Court, on which reliance has been placed by the learned counsel for the petitioner, that judgment, itself, has given an indication that in certain cases, it is permissible to recall the witness, invoking Order 18 Rule 17 CPC. Some of the circumstances in which such recall is warranted, are summarised as: 1) Application has to be *bona fide*; 2) Additional evidence, oral or documentary, should go to assist the Court to clarify the evidence on issues / in rendering justice. Apart from the above, the Court is further required to be satisfied that non-production of a witness earlier was for valid and sufficient reasons, and the Court may exercise its discretion to recall / order fresh evidence.

In the case on hand, it is not the case of the petitioner that he could not put the questions, which he desires to put, on recall, due to insurmountable reasons. As stated supra, a perusal of the deposition of the witness discloses that an extensive cross-examination was already done. In the judgment cited supra, though the Hon'ble Supreme Court had expanded the scope of Order 18 Rule 17 CPC., to some extent, giving liberty to seek recall of a witness, the Code of Civil Procedure, by itself, does not contain such liberty.

A careful reading of Order 18 Rule 17 discloses that the provision does not provide for an Application to be made by a party to the proceedings for recalling a witness for re-examination. Recalling of the witness for re-examination or putting certain questions, is for the benefit of the Court to seek clarification. Over a period of time, it appears, the Supreme Court allowed this practice of recalling the witness by way of an Application, even at the instance of a party to the proceedings. However, the fact that a party is allowed to file an Application, by itself, cannot give a right to ignore the procedure laid down under Sections 135 and 137 of the Indian Evidence Act, 1872, which provided the order of examination-in-chief, cross-examination and re-examination and further, the right to lead evidence. In those circumstances, the limited permission granted by the Supreme Court to recall a witness would have to be understood as permissible under Sections 135, 137 and 138 of the 1872 Act. Further, recalling of a witness, on an Application by a party, would cause prejudice to the other, as, it may amount to filling up of lacuna, if any in the evidence of D.W.3.

Viewed from that angle also, refusal of the learned Judge to recall the witness cannot be found fault with. Hence, the order under Revision does not warrant any interference of this Court under Article 227 of the Constitution of India.

The Civil Revision Petition is therefore, dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

12th September 2018

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