

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.5353 of 2018

ORDER:

1) Assailing the order, dated 28.08.2018, passed in I.A.No.1229 of 2018 in O.S.No.277 of 2012 on the file of the Principal Senior Civil Judge, Rajahmundry, wherein an application made under Section 151 C.P.C. praying the Court to re-open the suit for the purpose of adducing further evidence of defendants 1 and 2, was rejected, the present Civil Revision Petition came to be filed.

2) Respondents 1 to 3 herein filed O.S.No.277 of 2012 seeking partition of the plaint schedule properties. When the suit was posted for judgment, the petitioners/ defendants 1 and 3 filed the present application to re-open the suit for the purpose of adducing further evidence on their behalf. It is stated in the affidavit that during the course of argument, it has come to their notice that the advocate for the plaintiffs has been trying to take undue advantage of the ambiguity that arose in the cross-examination of DW.2, who was one of the witnesses to Ex.B1-Will. Hence, they are advised to examine the other attestor of Ex.B1-Will, who was not readily available earlier in the village.

3) A counter came to be filed by the respondents/ plaintiffs opposing the same, contending that the petition is filed at a belated stage, that too when the matter is posted for judgment. It is also stated that only to fill up the lacunas in the cross-examination of DW.2, the present petition is filed and that there are no valid grounds to re-open the suit.

4) After considering the arguments advanced, the trial Court dismissed the said petition. Aggrieved by the same, the present revision petition is filed.

5) Learned counsel for the petitioners would submit that grave prejudice would be caused if the petitioners are denied an opportunity to adduce further evidence.

6) The short point that arises for consideration is whether the petitioners are entitled to re-open the suit when it was posted for judgment?

7) As seen from the record DW.2 was cross-examined on 11.07.2018. When the suit was posted for further evidence of the defendants, the petitioners/ defendants reported no further evidence. Hence, the trial Court closed the evidence of both sides and posted the case for arguments. The counsel for the petitioners as well as the counsel for the plaintiffs submitted their arguments and the suit was posted to

07.08.2018 for judgment. On 05.08.2018, the petitioners filed the present petition to re-open the case for the purpose of adducing further evidence on their behalf.

8) In *M/s.Bagai Construction Through its Proprietor, Lalit Bagai Vs. M/s.Gupta Building Material Store*¹), the Apex Court in para 12 held as under:

“After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by argument and decision thereon within a reasonable time. This Court has repeatedly held that court should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that

¹ AIR 2013 SC page 1849

final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151, CPC.”

9) In view of the principle laid down by the Hon’ble Apex Court in the judgment referred to above, unless there are compelling circumstances, the matter cannot be reopened when once closed. The compelling circumstances vary from case to case, depending upon the nature of case before the court. In the instant case DW.2 was cross-examined on 11.07.2018 and if there is any ambiguity in the cross-examination of DW.2, the petitioners should have taken steps to adduce further evidence at the earliest point of time. Without doing so the learned counsel for the petitioners proceeded further and submitted his arguments. When the suit was posted to 07.08.2018 for judgment, on 05.08.2018, the present application came to be filed to re-open the suit for the purpose of adducing further evidence. As no material is brought on record to conclude that there are compelling circumstances to reopen the evidence of the petitioners, I am not inclined to accept their request.

10) Having regard to the principles laid down by the Apex Court referred to above and in view of the fact that the

petition came to be filed at a belated stage, more so when the suit is posted for judgment, I am of the opinion that the petitioners failed to furnish proper and sufficient reasons for re-opening of the suit.

11) For the aforesaid reasons, the present Civil Revision Petition sans merit and the same is accordingly dismissed. No order as to costs.

12) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

20.09.2018
gkv

JUSTICE C.PRAVEEN KUMAR

