

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.5785 and 5786 of 2018

COMMON ORDER:

These two civil revision petitions are filed under Article 227 of the Constitution of India challenging the order passed in I.A.No.684 of 2012 and I.A.No.685 of 2012 in O.S.No.116 of 2009 by the Principal Junior Civil Judge, Kadiri, dated 21.08.2018 for reopening of the evidence of plaintiffs for and recalling of PW1 for further cross examination. The petitioners herein are the respondents/plaintiffs; and the respondents herein are the respondents/defendants before the trial Court and the respondents herein filed the two interlocutory applications for the purpose stated above alleging that the suit was posted for cross examination of DW.1 who is respondent No.8 and defendant No.4 in the above suit. At that stage, the petitioners came to know that PW.1 has to be cross examined further since certain documents confronted to the witness by mistake or oversight i.e., Exhibits A1 and A2 for the limited purpose, the respondents herein sought to reopen the evidence and recall PW.1.

The trial Court upon hearing the arguments permitted to reopen the evidence of plaintiffs and ordered recall of PW.1 for the limited purpose of cross examination. Aggrieved by the orders passed by the trial Court, these two revisions are filed on the ground that there is an abnormal delay in filing the petitions for reopening and recall, since PW.1 was examined two years ago and the grounds urged in the affidavit are not sufficient which permits the Court to recall PW.1 exercising power under Order XVIII Rule 17 CPC and requested to set aside the orders passed by the trial Court.

During hearing, the learned counsel for the petitioner placing reliance on the judgment in D. Nagalakshmi v. D. Rosamma and another¹, contended

¹ 2018 (4) HLT 260

that a witness cannot be recalled as per whims and fancies, and in the absence of justifiable reasons, the Court cannot recall PW.1 under Order XVIII Rule 17 CPC.

Whereas the learned counsel for the respondents opposed the petition on the ground that the order passed by the trial Court is discretionary in nature and this Court by exercising powers under Article 227 of the Constitution cannot interfere with the orders passed by the trial Court.

Undisputedly, the suit was filed for partition and the petitioners and respondents are related to one another and substantial rights are to be decided in the suit. When the respondents herein filed a petition under Order XVIII Rule 17 CPC, they need not seek reopening of the evidence and they can straightaway ask for recall of PW.1. However, the trial Court allowed the petition for affording a reasonable opportunity to the respondents to recall PW.1 and cross examine to confront Exs.A1 and A2. This order is now assailed in the revision petitions on the ground of delay, but the delay by itself is not a ground in view of the language used in Order XVIII Rule 17 CPC.

Order XVIII Rule 17 CPC made it clear that the Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."

Thus, it is clear from the language used in Order XVIII Rule 17 CPC that the Court at any stage of the proceedings may recall a witness and there is no interdict on the power to recall a witness by the Court but the only bar to exercise such power is, it is to be invoked not to fill up the lacunae in the evidence.

But it is not the case of the petitioners herein that cross examination is intended to fill up lacunae but the order passed by the trial Court is purely discretionary in nature since the Court can permit such recall of any witness at any stage to decide the real controversy between the parties either on application of either of the parties or recording satisfaction that further examination of particular witness is necessary to decide the real controversy. But the trial Court exercised its power under first limb of Order XVIII Rule 17 CPC and, therefore, to afford a just and reasonable opportunity to cross examine PW.1 only to confront Exs.A1 and A2, an opportunity is to be given to the parties to substantiate its contentions. But insofar as the delay is concerned, such a delay can be compensated by awarding costs.

Normally, when the trial Court passes a discretionary order, this Court would not exercise powers under Article 227 of the Constitution of India since the Court would not transgress its jurisdictional limits warranting interference of this Court under Article 227 of the Constitution. Therefore, I find no ground to interfere with the impugned orders passed by the trial Court in I.A.No.684 of 2018 and I.A.No.685 of 2018.

Therefore, the civil revision petitions are dismissed. Interim stay granted on 03.10.2018 shall stand vacated. The trial Court is directed to dispose of the suit O.S.No.116 of 2009 as expeditiously as possible, in any event, within three months from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, the delay has to be compensated by awarding suitable costs and, therefore the respondents are directed to pay Rs.2,000/-. Pending miscellaneous petitions, if any, shall also stand dismissed.

M. SATYANARAYANA MURTHY, J

06th December, 2018
Note: Issue C.C. in one week.
B/o KSM

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