

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NOS.6974, 6977 AND 7035 OF 2018

COMMON ORDER
(Per Sri Justice Sanjay Kumar)

These civil revision petitions, filed by the seventh defendant in O.S.No.690 of 2009 on the file of the learned III Additional District Judge, Ranga Reddy District at L.B.Nagar, are directed against the individual orders dated 21.03.2018 passed in I.A.Nos.258, 259 and 260 of 2018 filed by her in the said suit. C.R.P.No.6977 of 2018 pertains to I.A.No.258 of 2018 while C.R.P.No.6974 of 2018 relates to I.A.No.259 of 2018 and C.R.P.No.7035 of 2018 relates to I.A.No.260 of 2018 filed in the suit.

O.S.No.690 of 2009 was filed by the first respondent-plaintiff for partition and separate possession of his one third share in the Suit Schedule - A, B and C properties. I.A.No.258 of 2018 was filed therein by the petitioner-seventh defendant under Order 18 Rule 17 CPC to recall P.W.1 for the purpose of further cross-examination by her. I.A.No.259 of 2018 was filed by her under Section 151 CPC to reopen the evidence of the defendants to enable her to adduce evidence. I.A.No.260 of 2018 was filed by her under Section 151 CPC to reopen the evidence of the plaintiff for the purpose of further cross-examination of P.W.1 by her counsel.

Perusal of the individual orders under revision reflects that the trial Court replicated the same order in all three I.As. In this process, the trial Court lost sight of I.A.No.259 of 2018 filed in the suit to reopen the evidence of the defendants to enable the petitioner-seventh defendant to adduce her own evidence. This plea was completely overlooked by the trial Court though the said I.A. was also dismissed. The trial Court merely considered Order 18 Rule 17 CPC in the context of recalling P.W.1 for

further cross-examination and held against the petitioner-seventh defendant on the ground that no tenable reasons were made out to enable her to recall P.W.1 for further cross-examination by her counsel.

Heard Sri Botla Venkateswara Rao, learned counsel for the petitioner-seventh defendant, and Sri Aadesh Varma, learned counsel representing Sri B.Preetam Singh, learned counsel on caveat for the first respondent-plaintiff.

Both the learned counsel concede that at his own behest, the plaintiff (P.W.1) has been recalled by the trial Court for adducing further evidence and the matter is adjourned to 05.12.2018 for that purpose. Therefore, the question of recalling P.W.1 now at the instance of the petitioner-seventh defendant is superfluous as he has already been recalled and it would be open to the counsel for the petitioner-seventh defendant to cross-examine P.W.1 after he adduces further evidence.

It is the case of the petitioner-seventh defendant that she has absolute rights over one of the suit properties in O.S.No.690 of 2009 and that the document in that regard has already been filed along with the common written statement but was not marked in evidence. It is to mark the said document in evidence that she now wants to be allowed an opportunity to adduce independent evidence. Further, she wanted recall of P.W.1 to accost him with the said document. As P.W.1 has already been recalled for the purpose of adducing his own further evidence, Sri Botla Venkateswara Rao, learned counsel, would submit that she may be given an opportunity to do so now.

On the other hand, Sri Aadesh Varma, learned counsel, would assert that the husband of the petitioner-seventh defendant, the first defendant in the suit, already deposed as a witness and the petitioner-

seventh defendant is now coming forward to adduce evidence independently only to fill in the gaps left out by her husband in his own evidence. He would place reliance on case law in support of his contention that it is not open to a party to fill in the gaps in the evidence already adduced at a later stage.

In Dr.KASIMHANTI VENKATA SRINIVASA SRIKRISHNA GEETHANAND V/ s. KANDUKURI BUTCHI MALLIKESWARA RAO¹, a learned Judge of this Court held that a party necessarily has to satisfy the Court that the aspects on which he proposes to cross-examine the witness are material for proper and effectual adjudication of the case and that if an opportunity is not given to him for further cross-examination, it would result in the failure of justice. Applying this principle to the case on hand, the petitioner-seventh defendant wishes to cross-examine P.W.1 on the document under which she claims exclusive rights over one of the suit properties. Therefore, the requirement as spelt out in the aforesaid decision is fulfilled.

In this regard, it may also be noted that in BADANA MUTYALAMMA V/ s. PALLI APPALA RAJU², another learned Judge of this Court observed that disclosing the purpose for recall of a witness in clear terms would alert the opposite side and prepare it to conveniently avoid answering the relevant questions.

In ADAKA PEDA ANJIAH V/ s. YANAMADALA SESHIAH (DIED)³, a learned Judge of this Court opined that when the application under Order 18 Rule 17 CPC is found to be *bonafide* and the additional evidence would assist the Court to clarify the issues and in rendering

¹ 2018 (3) ALD 86

² 2017 (5) ALT 69

³ 2017 (1) ALD 570

justice, it would be open to the Court to exercise its discretion in allowing recall of the witness. Needless to state, in the case on hand, recall of P.W.1 is rendered unnecessary as he has been recalled independently.

In *K.K.VELUSAMY V/ s. N.PALANISAMY*⁴, the Supreme Court observed that in appropriate cases, the Court can exercise its discretion to permit reopening of evidence and/or recalling of witnesses for further examination/cross-examination after evidence of the parties is concluded and arguments are commenced or even when arguments have concluded.

The endeavour of the trial Court would basically be directed at ascertaining the truth underlying the dispute between the parties. Be it noted that unless an application filed in this regard is found to be mischievous or frivolous or to cover up negligence or lacunae, it should not be rejected in the ordinary course. On merits, this Court finds that the petitioner-seventh defendant was lulled into a false sense of security as her husband, the first defendant, adduced evidence but it appears that the document under which she claims exclusive title to one of the suit properties, though filed along with the common written statement, was not even marked in evidence. As such a crucial document would necessarily assist the Court in its quest to do justice, this Court is of the considered opinion that the trial Court erred in failing to take note of these aspects and in dismissing the applications.

That being so as the trial Court, in its own wisdom, permitted reopening of the evidence of the plaintiff and recalled P.W.1 to enable him to adduce further evidence, this Court sees no difficulty in permitting the counsel for the petitioner-seventh defendant to cross-examine P.W.1 on all aspects of his evidence. Similarly, this Court sees no reason as to why

⁴ (2011) 11 SCC 275

the petitioner-seventh defendant should not be permitted an opportunity to adduce her own evidence as the trial Court already deemed it fit to reopen the evidence of the plaintiff despite posting the matter for arguments in March, 2018.

The orders under revision are accordingly set aside and the civil revision petitions are allowed to the extent of permitting the counsel for the petitioner-seventh defendant to cross-examine P.W.1 on all aspects of his evidence after he adduces further evidence, be it on 05.12.2018 or thereafter. Further, the petitioner-seventh defendant shall be permitted by the trial Court to adduce her own evidence on the date(s) fixed by the trial Court without seeking adjournment.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

5th DECEMBER, 2018

PGS