

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
CRP.Nos 7514, 7515, 7516 and CRP.No. 7517 of 2018

COMMON ORDER:

These revisions are filed against the common order dated 10-12-2018, wherein and whereby the applications filed by the petitioners under Order 18 Rule 17 to reopen the evidence of DW.1 were dismissed.

Learned counsel for the petitioners submits that counsel on record for the petitioners in the trial Court has not properly cross-examined the DW.1 except giving suggestions and no direct questions were put to her and they have come to know of the same, when the petitioners changed their counsel and filed the present applications, the trial Court without considering the same in proper perspective, dismissed the applications. He also submits that suit is filed for declaration of title and perpetual injunction, where substantial rights of the parties involved. If the petitioners are deprived of their right to properly cross-examine the DW.1, they will be put to irreparable loss. In support of his contention, he relied on the judgment of **Madras High Court** in CRP.(PD) Nos 2019 and 2020 of 2018 dated 17-07-2018.

On the other hand, learned counsel for respondent submits that the petitioners have taken a plea that one Shaik Abdul Raheem, who is the husband of 1st petitioner and father of petitioner Nos 2 to 5 sold the subject properties to the respondent by way of registered sale deeds and the petitioners have examined the concerned Sub-Registrar as PW.2. He

submits that change of counsel is not a ground for allowing the applications. He also submits that lacunas in the cross-examination cannot be cured at this stage. In support of his contentions, learned counsel relied on the judgment of **Vadiraj Naggappa Vernekar (Dead) through LRs. v. Sharadchandra Prabhakar Gogate**¹, wherein the Supreme Court held as under:

“ In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been

¹ (2009 4 Supreme Court Cases 410)

completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

17. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case. Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.

18. We, accordingly, have no hesitation in dismissing the appeal, but without any order as to costs. The appeal is accordingly dismissed.”

In this case it is to be seen that suit is of the year 2012. The evidence of defendant was already closed. It is a fact that PW.2 i.e. the concerned Sub-Registrar is examined. This Court

in **Nagumothu Sriharinath v. Nagumothu Vani**² held as under:

“ By a reading of the above provision, it is apparent that when the Court feels necessity at any stage of the trial to call for the witness already examined, it can put such questions to him as the Court thinks fit. But, in the present situation, it is altogether different wherein the petitioner seeks to recall P.W. 1 for further cross-examination on the ground that his counsel at the time of cross-examination was not properly briefed. This is not the criteria laid down for recalling of a witness; but, in practice, it is not denied that the Court has always permitted at the instance of parties for recalling of witness for further examination/cross-examination subject to the facts and circumstances of the case.

In this case, the reason assigned for recalling the witness for further cross-examination being that of not briefing properly the counsel at the time of cross-examination of P.W. 1, cannot be accepted as a ground for recalling of the witness for further cross-examination. However, this order will not in any way affect the production or otherwise of the evidence of the petitioner-defendant.”

These applications have been filed only on the ground that proper questions are not put to DW.1 by earlier counsel and the petitioners have changed their counsel, who advised them to file the present applications to further cross-examine DW.1. In the judgment cited (supra 2), almost in similar and identical circumstances, this Court negated the pleas of the petitioner. Though the petitioner cited judgment of Madras

² (1997 (5) ALT 209)

High Court, in view of law laid down by the Supreme Court in the judgment cited supra and in view of the facts and circumstances of the case, I do not see any reason to interdict the order passed by the Court below by exercising power under Article 227 of Constitution of India.

Accordingly, all the revisions are dismissed. As a sequel to the disposal of these revisions, miscellaneous petitions, if any, pending shall stand closed.

21-12-2018
Nvl

A.RAJASHEKER REDDY,J



