

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.RP.Nos.4596 & 4601 of 2015

COMMON ORDER:

These two Revisions arise between the same parties out of the same suit and so they are being disposed of together by this common order.

2. Petitioners in both these Revisions are defendants 5 & 6 in O.S.No.42 of 2014 on the file of the Senior Civil Judge, Shadhnagar.

3. The respondents 1 to 4 filed the said suit for partition of the plaint schedule properties and separate possession of 1/20th share in A-schedule land and B-schedule houses. The said suit was filed on 30.12.2003. The basis of the claim in the plaint appears to be grant of an Occupancy Right Certificate(ORC) jointly in favour of defendants 1 to 4 on 20.04.1987.

4. Petitioners are daughters of 1st defendant.

5. Subsequently, respondents 9 to 15 were impleaded as defendants 7 to 13 in the suit since they also claim to have rights jointly along with defendants 1 to 4/respondents 5 to 8.

6. The evidence of PW1 had been closed on 22.07.2009.

7 After the evidence on the plaintiffs' side was closed and after chief examination affidavit of 7th defendant(DW-3) was filed taking a plea that the ORC granted to defendants 1 to 4 was set aside and remanded back in appeal by the Joint Collector, Mahabubnagar on 13.01.2009 in File No.F2/15 of 2007 and when the matter was coming up for cross-examination of DW-3, petitioners/defendants 5 & 6 have filed I.A.No.176 of 2015 to reopen the evidence on the side of the plaintiffs/respondents 1 to 4, and I.A.No.177 of 2015 to recall PW1 for further cross-examination.

8 In the affidavits filed in support of both these applications it is pleaded that it had come out in the evidence of DW3 that there were proceedings cancelling the ORC; that the petitioners/defendants 5 & 6 who are claiming through defendants 1 to 5 were not aware of it; and that there is necessity to further cross-examine PW1 on these aspects by reopening the plaintiffs' evidence and recalling PW1 for cross-examination.

9 Counter affidavit was filed by respondents 1 to 4 and 9 to 15 opposing these applications. It is contended that respondents 1 to 4/plaintiffs were not aware of the proceedings of cancellation of ORC; that there is no collusion between the respondents 1 to 4 and respondents 9 to 15;

that when respondents 1 to 4 had no knowledge about the proceedings of cancellation of ORC and they are not parties to the same, no useful purpose would be served by reopening the evidence of plaintiffs and recalling PW1 for further cross-examination on the said aspects; and the said applications are filed only to drag on the suit proceedings.

10. By separate orders dt.15.09.2015 both the applications were dismissed.

11. The Court below held that though there is power conferred under Order XVIII Rule 17 CPC to recall any witness for the purpose of further cross-examination at any stage of the suit, the said provision was not intended to fill up the omissions or latches. It also held that though petitioners had stated about cancellation of ORC proceedings, they did not state what those proceedings are and when they occurred and there are no valid reasons to re-open the evidence of plaintiffs and recall PW-1.

12. Assailing the same, these two Revisions are filed.

13. Heard Sri M.R.K.Chakravarthy, counsel appearing for Sri M.V.Durga Prasad, counsel for petitioners, Sri N.Vasudeva Reddy, counsel appearing for respondents 1 to 4

and Sri E.Sambasiva Pratap, Counsel appearing for respondents 9 to 15.

14. The deposition of DW3 has been filed by the petitioners, which indicates that the ORC granted on 20.04.1987 to defendants 1 to 4/respondnes 5 to 8 was set aside at the instance of respondents 9 to 15/defendants 8 to 13 by the Joint Collector, Mahabubnagar on 13.01.2009 and the matter was remanded back to the Competent Authority.

15. It is not the case of the petitioners that respondents 1 to 4 were parties either to the ORC proceedings or to the proceedings canceling the ORC.

16. Merely because the respondents 1 to 4 are relying on the ORC as one of the basis for their claim in the suit, no useful purpose would be served by reopening the evidence of the plaintiffs and recalling PW1 for further cross-examination on the aspect of cancellation of ORC for the simple reason that respondents 1 to 4, not being parties to the cancellation order dt.13.01.2019, they would be unaware of it.

17. I therefore do not find any error of jurisdiction in the orders passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India.

18. Accordingly, both the Civil Revision Petitions are dismissed. No order as to costs.

19. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

14th March, 2019.

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