

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY ,THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 3440 OF 2014

Petition under Article 227 of the Constitution of India, aggrieved by the Order dated. 08.07.2014 in IA.No.512/2013 in OS.No.215/2006 on the file of the court of Junior Civil Judge, Mahabubnagar .

Between:

Smt.m.Balamani, W/o M.Ramulu, aged about 49 years,Occ: Household, R/o 8-1-47/21 Behind.District Hospital, Teacher's colony Mahabubnagar.

...PETITIONER/ PETITIONER/DFDT.No.1

AND

1. Myadari Laxmi, W/o Late.Chinnaiah ,aged about 55 years,Occ:Household R/o 7-16, Azaadnagar, Makthal (v) & (m) Mahabubnagar District.
2. Balakrishna, S/o Late.M.Chinnaiah aged about 29 years Occ: Pvt employee R/o 7-16, Azaadnagar, Makthal (v) & (m) Mahabubnagar District
3. Kum.Krishnaveni, D/o Late.M.Chinnaiah, aged about 29 years Occ:Household R/o 7-16, Azaadnagar, Makthal (v) & (m) Mahabubnagar District.
4. Kum.Aruna, D/o Late.M.Chinnaiah aged about 25 years Occ:student R/o 7-16, Azaadnagar, Makthal (v) & (m) Mahabubnagar District
5. Kum.Archana, D/o Late.M.Chinnaiah aged about 25 years Occ:Student r/o 7-16, Azaadnagar, Makthal (v) & (m) Mahabubnagar District

...RESPONDENTS/ RESPONDENTS/PLAINTIFFS

CRPMP. NO: 4700 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased stay all further proceedings in OS.No.215/2006 pending on the file of Hon'ble court of Junior Civil Judge, Mahabubnagar, pending disposal of CRP .

Counsel for the Petitioner :SRI. J PRABHAKAR

Counsel for the Respondent Nos. 1 to 5: SRI. K SOMESWARA KUMAR

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP No.3440 of 2014

ORDER:

1. This civil revision petition is filed by the petitioner/defendant No.1 under Article 227 of the Constitution of India, assailing the order dated 08.07.2014 in IA No.512 of 2013 in OS No.215 of 2006 on the file of the Junior Civil Judge, Mahabubnagar.
2. The petitioner/defendant has filed IA No.512 of 2013 under Order-XVIII, Rule-17 read with Section 151 of the Civil Procedure Code to recall PW.1 for further cross-examination on his counter claim and on Ex.B.14. This application was partly allowed, recalling PW.1 only for the purpose of confronting Ex.B.14 and rejecting the claim of the petitioner to recall PW.1 for further cross-examination on his counter claim.
3. The learned counsel for the revision petitioner/defendant No.1 seeks to submit that the trial Court ought to have permitted the petitioner/defendant No.1 to cross-examine PW.1 with reference to his counter claim for the simple reason that the counter claim forms part of Ex.B.14 and the question touching the counter claim and very much required while cross-examining the witness on Ex.B.14 and that the Court below ought to have given one more opportunity to the petitioner to further cross-examine PW.1 on the aspect of counter claim in view of the exhibiting the Ex.B.14. Though the petitioner

has given specific reason to recall PW.1, the Court below has failed to appreciate the same and partly allowed the petition permitting to cross-examine PW.1 only with reference to Ex.B.14.

4. Per contra, the learned counsel for the respondents/plaintiffs contends that the Original Suit was filed in the year 2006 and the defendants are trying to stall the proceedings in one way or the other. There is no justification in their request for further cross-examination of PW.1 and there is no illegality in the order impugned and that PW.1 may be recalled only for the limited purpose of cross-examination with reference to Ex.B.14, which was exhibited subsequent to the completion of cross-examination of PW.1.

5. The Original Suit was filed for declaration of title and recovery of possession in the year 2006. The defendant No.1 filed the written statement on 27.10.2006. Thereafter, issues were settled. On behalf of the plaintiffs, PW.1 was examined. His cross-examination was also completed on 26.07.2012. Later, on 05.09.2012 evidence affidavit of DW.1, petitioner herein was filed and that on 05.09.2012 the documents were marked as Exs.B.1 to B.13. Thereafter, the matter was adjourned for determination of stamp duty on the document dated 05.05.1997. Later, on 20.09.2012 stamp duty was paid and on 03.10.2012 the said document was exhibited as Ex.B.14 subject to the objection of the plaintiffs.

6. It is true that after one year six months of cross-examination of PW.1, the application in IA No.512 of 2013 was filed to recall PW.1 for further cross-examination with reference to counter claim as well as with reference to Ex.B.14. As per the averments in the affidavit filed in support of the application in IA No.512 of 2013, it is mentioned by the petitioner/defendant No.1 that there was change of counsel subsequent to the cross-examination of PW.1 and that certain facts were not elicited in the cross-examination of PW.1 by the earlier counsel and now the new counsel has advised for further cross-examination on the counter claim, more so, in view of exhibiting the document Ex.B.14 to avoid any technical objections, it is just and essential to further cross-examine PW.1 with reference to the counter claim.

7. On a studied examination of the order impugned, the Court below has not considered about the request of the petitioner/defendant No.1 for further cross-examination on the counter claim but only considered his request to cross-examine PW.1 with reference to Ex.B.14. Ex.B.14 is a simple sale deed under which the defendant No.1 is claiming to have purchased the said property. It is an admitted fact that though the said document was filed along with the written statement, it was not exhibited till 03.10.2012, whereas the cross-examination of PW.1 was completed by 26.07.2012. The Court below has recalled PW.1 for cross-examination only with reference to Ex.B.14. But, since the defendant has set up a counter claim in

respect of the suit schedule property through Ex.B.14 and that the defendant No.1 has explained in her affidavit that her earlier counsel could not cross-examine PW.1 with reference to her counter claim and that it is not possible to cross-examine PW.1 on Ex.B.14 without questioning on the counter claim, I am of the considered opinion that if an opportunity is given to the defendant to further cross-examine PW.1 with reference to her counter claim, no prejudice would cause to the plaintiffs, as PW.1 is already recalled for cross-examination with reference to Ex.B.14 which is the basis for the said counter claim.

8. The learned counsel for the respondents/plaintiffs has relied upon the principles laid in *Vadiraj Naggappa Vernekar (dead) through LRs v. Sharadchandra Prabhakar Gogate*¹, wherein the Hon'ble Supreme Court while dealing with the proviso of Order-XVIII, Rule-17 CPC held as follows:

"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.

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

¹ (2009) 4 SCC 410

already been recorded but to clear any ambiguity that may have arisen during the course of his examination."

9. In the instant case, the evidence of plaintiffs is closed and only after closure of the plaintiffs' evidence, evidence affidavit of defendants is filed. Initially in the evidence of DW.1, Exs.B.1 to 13 were marked. Thereafter, on payment of required stamp duty and penalty, the unregistered simple sale deed was exhibited as Ex.B.14. The Court below on considering the facts of the case, permitted to recall PW.1 to cross-examine with reference to Ex.B.14 as there was no such opportunity at the time of cross-examination of witness to confront this document. Further, the defendant has been claiming the property through Ex.B.1 and set up a counter claim. As the witness is being recalled for cross-examination on Ex.B.14 if he is cross-examined with reference to his counter claim in addition to Ex.B.14, no prejudice would cause to the plaintiffs. In that view of the matter, the trial Court has failed to appreciate the facts of the case with the principles laid under Order-XVIII, Rule-17 CPC and the order impugned is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed and the impugned order dated 08.07.2014 in IA No.512 of 2013 in OS No.215 of 2006 on the file of the Junior Civil Judge, Mahabubnagar, is hereby set aside and consequently, the IA No.512 of 2013 is allowed. PW.1 is recalled for further cross-examination on the counter claim by the defendants and also on Ex.B.14. However, considering the fact that

the Original Suit was filed in the year 2006, and it is pending for the last more than 15 years, the trial Court shall make every endeavour to dispose of the Original Suit within six months from the date of receipt a copy of this order. Both the parties to the suit shall cooperate with the trial Court for expeditious disposal of the Original Suit, as directed. In the circumstances of the case, there shall be no order as to costs.

11. Miscellaneous applications, if any pending in this revision petition shall stand closed.

//TRUE COPY//

SD/-K.AMMAJI
ASSISTANT REGISTRAR
Gp
SECTION OFFICER

To,

1. The Junior Civil Judge, Mahabubnagar .
2. One CC to SRI. J PRABHAKAR Advocate [OPUC]
3. One CC to SRI. K SOMESWARA KUMAR Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

CDL

SB

4/11

HIGH COURT

DATED:31/12/2021

ORDER

CRP.No.3440 of 2014



ALLOWING THE C.R.P

⑥
18/1/22
Axx