

HON'BLE SMT JUSTICE P.SREE SUDHA

C.R.P.Nos.4555 AND 4556 OF 2015

COMMON ORDER:

Heard both the learned counsel.

C.R.P.No.4555 of 2015 is filed against the order dated 21.09.2015 passed in I.A.No.1263 of 2015 in O.S.No.5 of 1999 by the II Additional District Judge, Warangal.

C.R.P.No.4556 of 2015 is filed against the order dated 21.09.2015 passed in I.A.No.1262 of 2015 in O.S.No.5 of 1999 by the II Additional District Judge, Warangal.

The petitioners/defendant Nos.8 and 9 have filed the aforesaid I.As., for reopening the evidence of PWs.1 and 2 and for recall of PWs.1 and 2 to cross-examine them and the said applications are dismissed.

The revision petitioners stated that they are the owners of the property in question and they were

impleaded in the suit as per the order dated 11.03.2014. By that time, the evidence of the plaintiffs was completed. But, the trial Court observed that the petitioners herein are not parties to the suit during recording of evidence of plaintiffs and defendants 1 to 7. They have no chance to cross-examine PWs.1 and 2. Defendants 8 and 9 should have sought permission to cross-examine PWs.1 and 2 before leading their evidence. Having led their evidence, defendant Nos.8 and 9 now want to cross-examine PWs.1 and 2 on the ground that DW.2 was cross-examined by the counsel for the plaintiff and counsel for D1 to D7. This cannot be a ground to recall the witnesses for cross-examination. The provision under Order 18 Rule 17 of CPC enables a court to recall any witness to seek clarification. It does not give any right to the parties to reopen the case and recall witnesses as per wishes of

the parties. Accordingly, dismissed both the applications.

Learned counsel for the petitioners relied upon a decision reported in ***NIMMAKAYALA SUBBA REDDY AND OTHERS Vs. MADISETTY PALANKAIAH AND OTHERS***¹, wherein this Court held as follows :-

“..... As per Order XVIII Rule 17 C.P.C. it is not the right of the party but the power of the Court to sub-serve the ends of justice if at all to invoke irrespective of Court can allow even application moved by the party where it feels to sub serve the ends of justice and any recall of any witness is necessary and not otherwise.”

“.... This provision is introduced with the basic purpose postulated to enable the Court to clarify any position or doubt and the Court may either suo motu or on the request of the party, recall any witness at any stage and this can be exercised that any stage of the suit and once Court recalls the witness for purpose of any such clarification or otherwise, the Court may permit the parties to assist the Court by examining the

¹ 2018 (3) ALD 227

witness for said purpose. However, it is not to fill up the lacunas or gaps, muchless to the prejudice of the other side.”

Learned counsel for the respondents had contended that the trial Court had rightly dismissed the applications. In support of his contention, he relied upon a decision of the Hon’ble Supreme Court reported in **VADIRAJ NAGGAPA VERNEK Vs. SHARAD CHAND PRABHAKAR GOGATE**², wherein the Hon’ble Supreme Court held as follows :-

“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.”

² 2009 (3) ALT 25 (SC)

He further stated that the reason stated by the petitioners herein for cross-examination is not in accordance with the provisions of Order 18 Rule 17 CPC and they can cross-examine to clarify any doubts, but not to fill up the lacunas or gaps.

Admittedly, the suit is filed for declaration of title and permanent injunction against defendants 1 to 7 and subsequently the petitioners herein were impleaded as defendants 8 and 9 on 11.03.2014, as such, they could not cross-examine PWs.1 and 2. The petitioners mainly contended that they are the owners of the property in question and they should be given reasonable opportunity to cross-examine PWs.1 and 2. It is not the case of the petitioners that they have already cross-examined PWs.1 and 2 and again they intended to cross-examine them for some clarification or to fill up the lacunas or gaps. As they are not parties to the suit when PWs.1 and 2 were cross-examined, now

they intended to avail their right of cross-examination of PWs.1 and 2. Further, the suit is filed for declaration of title and it has to be decided on merits, after duly giving opportunity to all the parties concerned. Therefore, this Court finds that the orders of the trial Court are not on proper appreciation of facts of law and they are liable to be set aside. Further, it is also brought to the notice of this Court that the matter is posted for arguments.

Therefore, the Civil Revision Petitions are allowed by setting aside the impugned orders of the trial Court. The trial Court is directed to accommodate one day for cross-examination of PWs.1 and 2. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT JUSTICE P.SREE SUDHA

Date: 14.07.2022
Prv

