

HON'BLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.Nos.2407, 2542 and 2683 of 2019

COMMON ORDER:

These civil revision petitions are filed to set aside the common order, dated 09.09.2019, in I.A.Nos.645 and 646, 647 of 2019 in O.S.No.141 of 2015 on the file of Principal Junior Civil Judge- cum-Judicial Magistrate of First Class, Gajwel.

2. Heard learned counsel for the petitioner and the learned counsel for the respondent. Perused the record.

3. The respondent-plaintiff filed the main suit for declaration of the title and permanent injunction against the petitioner in respect of the suit schedule property. When the suit was coming-up for trial, the respondent filed applications in I.A.Nos.645, 646 and 647 of 2019 to reopen the suit, receive the document and recall DW.1 for marking document No.4353 of 2004 respectively.

4. In the accompanying affidavit of the application, it is stated that the petitioner-defendant has pleaded that he has got registered sale deed in Sy.No.273 to an extent of Ac.0-03 guntas of Pregnapur Village abutting Rajeev Rahadari Road. But, the respondent came

to know that there is a registered sale deed bearing document No.4353/2004 dated 18.05.2004 in respect of the land to an extent of Ac.2-17 guntas in Sy.No.273/AA1 situated at Pregnapur Village, Gajwel Mandal, Siddipet District in the name of alleged vendor of the petitioner herein. The respondent filed certified copy of the registered sale deed and for proper adjudication of the suit, it is necessary to re-open the suit, recall the evidence of DW.1 and to receive the subject document.

5. The petitioner filed counter-affidavit stating that he was examined as DW.1 and marked Exs.B.1 and B.2 and he was cross-examined thoroughly by the respondent.

6. The subject document is not all concerned with the suit schedule property. In the plaint or in his evidence, the respondent has not stated anything about the subject document. The subject matter of the suit and the property of the sale deed are not one and the same. Therefore, he prays to dismiss the application.

7. On a consideration of the material on record, the trial Court allowed the three applications vide common order dated 09.09.2019.

8. Challenging the said order, the present revisions are filed.

9. Learned counsel for the petitioner submits that the trial Court has committed error in allowing the applications. The subject document is not at all relevant to the subject matter of the suit and it is not relevant for adjudication of the present suit. He also submits that when the suit is coming-up for arguments, the present applications are filed only to protract the proceedings. He has placed reliance on the decisions¹ of **A.Rama Mohan Reddy v. A.Vijaya Kumar**² and **Gayathri v. M.Girish**.

10. *Per contra*, learned counsel for the respondent, while supporting the impugned order, submits that the trial Court has rightly allowed the applications and the impugned order needs no interference. He has placed reliance on the decision of this Court in **Nimmayakayala Subba Reddy v. Madisetty Palankaiah**³.

11. Thus, on hearing the submissions of learned counsel for both the parties and on perusing the material on record, the point

¹ AIR 2016 Supreme Court 3559

² 2019 (1) ALD 398

³ 2018 (3) ALD 227

that arises for consideration is; whether the impugned order is sustainable in law?

12. Undisputedly, in the main suit, both the parties have adduced the evidence and the suit is posted for the arguments. At that stage, the respondent filed the present applications to reopen the suit, receive and recall DW.1 for marking the subject document respectively stating that petitioner has pleaded that he has got registered sale deed in Sy.No.273 to an extent of Ac.0-03 guntas of Pregnapur Village abutting Rajeev Rahadari Road. But, the respondent came to know that there is a registered sale deed bearing document No.4353/2004 dated 18.05.2004 in respect of the land to an extent of Ac.2-17 guntas in Sy.No.273/AA1 situated at Pregnapur Village, Gajwel Mandal, Siddipet District in the name of alleged vendor of the petitioner herein. For better adjudication of the suit, it is necessary to receive the same.

13. A perusal of the impugned order discloses that without giving any valid reasons, the subject document was received stating that to the extent of confrontation, the same is received, which is impermissible under law.

14. Coming to the other aspect of recalling of DW.1, who is the petitioner herein to mark the subject document, it is relevant to examine the power of the Court under Order XVIII Rule 17 of C.P.C.

15. In **Gayathri's** case (2 supra), the Apex Court at para No.7 held as under:

“ In K.K.Velusamy v. N.Palanisamy (2011) 11 SCC 275) while dealing with the power of the Court under Order XVIII Rule 17, this Court held as under:

“ 9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate* [*Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*, (2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198] .)

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to *clarify any issue or doubt*, by recalling any witness either *suo motu*, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of

such clarification, it may, of course, permit the parties to assist it by putting some questions.”

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

21. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. The courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, reopening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.”

16. As held by the Apex Court in **Badana Mutyalamma v. Palli Appala Raju**⁴ that this provision is introduced with the basic purpose postulated to enable the Court to clarify any position or

⁴ 2016 (6) ALD 510

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 at 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 witness for said purpose. However, it is not to fill-up the lacunas or gaps, much less to the prejudice of the other side.

17. Coming to the present case, admittedly, the main suit is at the stage of arguments. At this stage, the applications are filed to reopen the suit, receive the document and recall DW.1 for marking of the subject document on the ground that it is relevant for proper adjudication of the case. It clearly shows that there is a gap in the evidence with regard to the subject document and to fill-up the same, the present applications are filed.

18. Keeping in view the above principles laid down by the Apex Court, the recording of evidence should be continuous, followed by arguments, without any gap. More so, there are no compelling circumstances or valid reasons assigned by the trial Court and there is no specific issue requires to be clarified by recalling any witness,

more particularly, DW.1. It appears by filing the present applications, it is only the endeavour of the respondent to fill-up the gap in the evidence, which would certainly impermissible under law.

19. For the foregoing reasons, I am of the considered view that the order of the trial Court suffers from irregularity warrants interference by this Court under Article 227 of the Constitution of India.

20. In the result, all the civil revision petitions are allowed. The impugned common order dated 09.09.2019 in I.A.Nos.645, 646 and 647 of 2019 in O.S.No.141 of 2015 is hereby set aside. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

A.SANTHOSH REDDY, J

09.02.2023

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