

HON'BLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.Nos.2533, 2532 and 2521 of 2019

COMMON ORDER:

These civil revision petitions are filed to set aside the common order, dated 20.03.2019, in I.A.Nos.116, 117 and 118 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 arguments, the respondent filed applications in I.A.Nos.116, 117 and 118 of 2019 to reopen the suit, receive the document and recall DW.1 for marking document No.5896 of 2014, dated 13.10.2014 respectively.

4. In the accompanying affidavit of the application, it is stated that the petitioner has pleaded that he is having land on eastern side of the suit schedule land purchased by him in Sy.No.185 to an extent of 0-35 ½ guntas situated at Pragnapur Village, Gajwel Mandal, Siddipet

District vide registered sale deed document No.5896/2014, dated 13.10.2014. The boundary on western side in the said document is shown as Rajiv Rahadari. But, the petitioner has got registered sale deed in Sy.No.273 to an extent of Ac.0-03 guntas of Pragnapur Village in between the land in Sy.No.184 and Rajiv Rahadari. The petitioner is claiming the land admeasuring Ac.0-03 guntas in Sy.Nos.273 and 185 of Pragnapur Village. The respondent filed certified copy of the registered sale deed vide document No.5896/2014 dated 13.10.2014 and to get proper adjudication of the suit, it is necessary to reopen the suit, recall the evidence of the petitioner i.e. DW.1 and receive the document.

5. The petitioner filed counter-affidavit stating that he was examined as DW.1 and marked Exs.B.1 to Ex.B.22 and he was cross-examined thoroughly by the respondent.

6. The document in question is not all concerned with the suit schedule property. In the plaint or evidence, the respondent has not averred anything about the said document and the subject matter of the suit and the property of the sale deed are not one and the same. The document in question is no way concerned for disposal of the present suit. 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 20.03.2019.

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 document in question 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 Kumar²** 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 of this Court in **Nimmayakayala Subba Reddy v. Madisetty Palankaiah³**.

¹ AIR 2016 Supreme Court 3559

² 2019 (1) ALD 398

³ 2018 (3) ALD 227

11. Thus, on hearing the submissions of learned counsel for both the parties and on perusing the material on record, the point 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 hearing the arguments. At that stage, the respondent filed the present applications to re-open the suit, receive and recall DW.1 for marking the document in question respectively stating that petitioner has pleaded that he is having land on eastern side of the suit schedule land purchased by him in Sy.No.185 an extent of Ac.0-35 ½ guntas situated at Pragnapur Village, Gajwel Mandal, Siddipet District vide registered sale deed document No.5896/2014, dated 13.10.2014. The boundary on western side in the said document is shown as Rajiv Rahadari. The petitioner is claiming the land admeasuring Ac.0-03 guntas in Sy.Nos.273 and 185 of Pragnapur Village. As such, the registered sale deed vide document No.5896/2014, dated 13.10.2014 is essential to be confronted to DW.1 i.e. the petitioner for better adjudication of the suit.

13. A perusal of the impugned order discloses that since there is no denial by the petitioner that the document No.5896/2014 does not

belong to him, the applications are allowed in favour of the respondent.

14. Coming to the other aspect of recalling of DW.1, who is the petitioner herein to mark the document in question, 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 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

⁴ 2016 (6) ALD 510

not fill-up the lacunas or gaps, much less to the prejudice of the other side.

17. Coming to the instant case, admittedly, the main suit is at the stage of arguments. At this stage, the applications are filed to re-open the suit, receive the document and re-call DW.1 for marking of the document in question respectively 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 document in question 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 the 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 not permissible 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 order dated 20.03.2019 in I.A.Nos.116, 117 and 118 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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