

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI
CIVIL REVISION PETITION NOs.405 AND 457OF 2022

Between:

Shaik Mastanvali, S/o Ghan Syda,
aged about 50 years, Occ: Coolie,
R/o Narasaraopet.

... Petitioner/1st defendants in 2 CRPs

Versus

1. Jakka Mallikharjuna Rao,
S/o Veeraiah, aged about 45 years,
Occ: Business, R/o Narasaraopet and another

... Respondents/Plaintiff/
Defendants 2 & 3 in 2 CRPs

Counsel for the petitioner : Sri PSP Suresh Kumar

Counsel for respondents : Smt.T.V.Sridevi

COMMON ORDER:

1st defendant in suit filed the above two revisions against the common order dated 14.12.2021 in I.A.Nos.1064 and 1065 of 2021 in O.S.No.52 of 2016 on the file of the Principal Junior Civil Judge, Narasaraopet.

2. 1st respondent in the revision being the plaintiff filed suit O.S.no.52 of 2016 on the file of the Principal Junior Civil Judge, Narasaraopet seeking the following reliefs:

a) for eviction of the defendants from schedule mentioned property directing the defendants to vacate the suit schedule property, if in case the defendants failed to do so, the Hon'ble through its agency vacate the defendants from the suit schedule property and deliver the possession of the suit schedule property to the plaintiff;

b) For recovery of the rent amount due from the 1st defendant to a tune of Rs.80,000/- from 01.04.2015 to 31.08.2018 with interest at 12% per annum from the date of suit till the date of realization;

c) For recovery of the rent amount due from the 2nd defendant to a tune of Rs.1,40,000/- from 01.04.2015 to 31.08.2018 with interest at 12% per annum from the date of suit till the date of realization;

d) for suit costs etc.

3. Pending the suit, after completion of evidence of P.Ws.1 and 2, 1st defendant filed I.A.No.1064 of 2021 under Section 151 of CPC to reopen the suit and I.A.No.1065 of 2021 under Order XVIII Rule 17 of CPC to recall P.Ws.1 and 2 for further cross-examination.

4. In the affidavit, it was contended inter alia that during the course of cross-examination of P.W.1 and his witness P.W.2, earlier counsel did not put up relevant questions. Plaintiff's evidence was closed on 22.07.2019 and thus, filed I.A.No.1064 of 2021 to reopen the suit and recall evidence of P.Ws.1 and 2 on 25.10.2021 and hence, prayed to allow the applications.

5. 1st Respondent/Plaintiff filed counter and opposed the application. In the counter, it was contended inter alia that the petition is filed only to drag on the proceedings and to fill up lacunas and hence, prayed to dismiss the applications.

6. Trial Court by common order dated 14.12.2021 dismissed the applications. Aggrieved by the same, present two revisions are filed.

7. Heard learned counsel on both sides.

8. Learned counsel for the revision petitioner would contend that the suit is filed for eviction and for other reliefs. While P.Ws.1 and 2 were cross-examined, relevant questions were not put to the witnesses in the light of the defence raised by the defendants. He would also contend that the suit is coming up for the evidence of D.W.1. If P.Ws.1 and 2 are further cross-examined, no prejudice will be caused and in fact, it will help to court to dispose of the lis judiciously. He would also contend that the trial Court failed to appreciate that the suit is only at trial stage and hence, recalling of P.Ws.1 and 2 is necessary for proper adjudication of the case.

9. On the other hand, learned counsel for the 1st respondent/plaintiff would further contend that only to fill up the lacunas,

the interlocutory applications are filed to drag on the proceedings and hence, prayed to dismiss the revision.

10. The point that arise for consideration is:

Whether the 1st defendant has shown sufficient cause to reopen the suit?

11. The suit, as observed supra, filed for eviction. Revision petitioner/1st defendant filed written statement and is contesting the suit.

12. In **Vadiraj Nagappa Vernekar (Dead) through L.Rs. v. Sharadchandra Prabhakar Gogate**¹, the Hon'ble Apex Court held as under:

25. In our view, though the provisions of Order 18 Rule 17 C.P.C. 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 and 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.

26. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, as available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been

¹ 2009 (4) SCC 410

discovered subsequently which were not within the knowledge of the applicant when the, affidavit evidence was prepared.

31. Some of the principles akin to Order 47 C.P.C. may be applied when a party makes an application under the provisions of Order 18 Rule 17 C.P.C., but it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.

13. In **K.K. Veluswamy v. N. Palaniswamy**², the Hon'ble Apex 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 18 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 *Dadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate*).

14. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his

² 2011 (11) SCC 275

hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such term as the Court may deem fit to impose.

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. (emphasis is mine)

14. From the above expressions of Hon'ble Apex Court, it is clear that the power under Order XVIII Rule 17 cannot be used routinely and such power can be used if the Court is satisfied that the reasons explained are valid and sufficient. The Court can exercise its discretion to recall a witness, but at the same time it should ensure that the process does not become a protracting tactic.

15. The Hon'ble Apex Court and this Court time and again cautioned that procedure is the handmaid of justice. Procedural

and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice.

16. In **Velugu Eswaramma and another vs. Velugu Shoba Rani**³, learned Single Judge of this Court held that “ failure to cross-examine witness on certain aspects is no ground to recall witness for purpose of further cross-examination”.

17. Reopen of evidence and recalling of witnesses is not a routine course. The petitioner has to satisfy the Court recording valid reasons to reopen the suit and recalling the witnesses.

18. Further, in the case on hand, the evidence of P.W.1 was closed on 21.07.2019 and the application was filed on 25.10.2021. Except making averment that earlier counsel did not put relevant questions, there is no reason assigned to recall P.Ws.1 and 2.

20. In view of the above discussion the order of the trial Court is neither perverse nor amounts to failure to exercise jurisdiction vested with it. Hence, the common order passed by the trial Court does not suffer from any illegality, which warrants interference of this Court under Article 227 of the Constitution of India. Hence, both the revisions are liable to be dismissed.

21. Accordingly, the Civil Revision Petitions are dismissed at the admission stage. No order as to costs.

³ (1) 2019 AP 34

As a sequel, pending miscellaneous petitions, if any pending, shall stand closed.

Date : 28.11.2022
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JUSTICE SUBBA REDDY SATTI

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