HIGH COURT OF ANDHRA PRADESH

MONDAY ,THE SECOND DAY OF MARCH

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE M.VENKATA RAMANA

CIVIL REVISION PETITION NO: 690 OF 2019

Between:

1. SUNKU NAGARAJU CHETTY (DIED) Madanapalle,
2. Sunku Pedda Reddspa, son of Subbarayappa Chetty, aged about 64 years, R/o. at door N.o 7/95, Nehru Bazar, Madanpalle town,
3. Sunku Chinna Reddeppa, son of Subbarayappa Chetty, aged about 57 years, R/o. at door N.o 7/95, Nehru Bazar, Madanpalle town,
4. S. Vijayalakshmi, aged about 70 years wife of late S.Nagaraja Chetty,residing at Krishna Vidhyalayam street, Madanapalle,
5. Parripati Varalakshmi, aged about 45 years wife of P.Raghunath @ Ganginepalli Raghunath, residing at Byreddipalli village and Mandal, Chittoor District,
6. M. Girijamba, wife of M. Hari Prasad, aged about 40 years, residing at Door No.20-2-522B Maruthi Nagar, Tirupathi,
7. A. Geetharani aged about 35 years wife of A.Balakrishna @ Balaji, residing at Gajjelavaripalli village, Kondamarri post, Chowdapalle Mandal.

...PETITIONER(S)

AND:

1. GOWDAPAGARI NAGABHUSHANA REDDY son of G. Venkatramana Reddy, aged about 43 years, Hindu, residing at Pedda Kondamarri village, Chowdepalli Mandal, Chittoor district.

...RESPONDENTS

Counsel for the Petitioner(s): N PRAMOD

Counsel for the Respondents: GADE VENKATESWARA RAO

The Court made the following: ORDER

HON'BLE SRI JUSTICE M. VENKATA RAMANA

CIVIL REVISION PETITION No. 690 of 2019

ORDER:

The plaintiffs are the revision petitioners. The defendant is the respondent. The petitioners laid a suit for permanent injunction restraining the respondent from interfering with their possession and enjoyment of the plaint schedule property, which is to an extent of Ac.3-02 cents with 35 tamarind trees at Kondamarri village, Chowdepalle Mandal of Chittor District.

2. The suit is stated to be at the stage of arguments. One of the documents sought to be relied on by the petitioners is a notebook purportedly containing certain entries, which has direct bearing in deciding the maters in issue in the suit. This notebook was filed along with the plaint. However, it was not introduced in evidence on behalf of the petitioners at appropriate stage.

3. In the meantime, the respondent filed I.A.No.342 of 2017 under section 151 CPC, requesting the trial Court to determine admissible nature of this notebook. The above petition was filed on 07.06.2017. It was not decided immediately. However, the respondent himself got it dismissed as not pressed on 24.09.2018. Thereafter, the petitioners wanted to get this notebook exhibited on their behalf and cited the reason that by mistake and oversight it could not be marked earlier. Therefore, for such purpose, they filed I.A.No.408 of 2018 under section 151 CPC to reopen the evidence on their behalf and I.A.No.409 of 2018 to recall the 2nd petitioner as P.W.1, for the purpose of getting the above notebook exhibited through him.

4. The respondent resisted this attempt of the petitioners mainly on the ground that the trial Court has already rejected the request of the petitioners to exhibit the same on their behalf and that this document is not readable.

5. The learned trial Judge by common order holding that the attempt of the petitioners is only to procrastinate the matter, who were given ample opportunity to prove their claim, choose to dismiss both the petitions.

6. Now, this Civil Revision Petition is presented under Article 227 of the Constitution of India only against that part of the order relating to I.A.No.409 of 2018 in refusing to recall P.W.1.

7. Sri N. Pramod, learned counsel for the petitioners, and Sri Gade Venkateswara Rao, learned counsel for the respondent, submitted their arguments.

8. Now, the point for determination is-"whether the 2nd petitioner be directed to be recalled as P.W.1 for the purpose of his request and if the discretion exercised by the trial Court in refusing to accede to such request is proper?

POINT:-

9. The document sought to be exhibited now was not produced by the petitioners along with any petition at the fag-end of the trial in the suit. The petitioners could have exhibited this document earlier, when P.W.1 was examined. It appears, having regard to nature of this document, its introduction, for reasons best known to the parties as well as the trial Court, in evidence through P.W.1, was withheld. This inference can be culled out particularly, having regard to the nature of I.A.No.342 of

2017 filed by the respondent and the manner by which that application was terminated in the trial Court.

10. This circumstance requires consideration, in as much as whatever reasons assigned by the trial Court is based on the conduct of the petitioners complaining that they have been unnecessarily delaying the matter. Before attributing certain conduct to the petitioners, the trial court should have also looked into the fact why I.A.No.342 of 2017 was entertained even before the document in question was introduced in evidence, when the material reflects that there was no such attempt on the part of the petitioners and that it was objected to by the respondent or by the court itself. For more than an year, the above petition was allowed to continue by the trial Court. It was not a petition filed by the petitioners. But it was an attempt by the respondent. This sole ground is sufficient to hold that the trial Court did not consider the matter objectively.

11. Reference to earlier applications filed to reopen, recall of P.W.1 and receiving documents, can have no bearing in this matter, particularly finding the situation that the document sought to be marked now was filed along with the plaint itself. When a party requires certain accommodation on the ground that the evidence to be let in has significant effect on their claim, particularly in the given facts and circumstances of the case, the trial Court should have considered such request.

12. In this context, the learned counsel for the respondent relying on **Gullipalli Srinivasa Rao vs. Kilaparthi Ananthalakshmi**[1] , with reference to Order-VII, Rule-14(3) CPC contended that in somewhat

[1]. 2019 LawSuit(AP) 262

similar circumstances, one of the learned Judges of this Court declined to interfere with the discretion exercised by the trial Court when a document was sought to be produced at a belated stage of arguments. This ruling needs to be considered in the light of the facts. Exercise of discretion by a Court predominantly depends on the fact situation. There cannot be an abstract proposition of law of invariable application that the discretion can be exercised or cannot be exercised, basing on either u/Or.VII, Rule-14 CPC or under Section 151 CPC or in terms of Order-18, Rule-17 CPC.

13. Another ruling relied on by the learned counsel for the respondent is ***Bagai Constructions and Ors. Vs. Gupta Building Material Store***[2]. In this ruling, ***Vadiraj Naggappa Vernekar (dead) through LRs. Vs. Sharadchandra Prabhakar Gogate***[3] and ***K.K.Velusamy vs. N. Palanisamy***[4] were considered in respect of limitation in application of Order-18 Rule 17 CPC. Ultimately, in para-10 of this ruling, in this context, it was observed as under:-

> *"10. In Velusamy even after considering the principles laid down in Vadiraj Naggappa Vernekar and taking note of Section 151 Code of Civil Procedure, this Court concluded that in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power Under Section 151 of the Code. The following principles laid down in that case are relevant:*
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> > *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*

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[2]. AIR 2013 SC 1849
[3].2009(4) SCC 410
[4].2011 (11) SCC 275

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. With these principles, let us consider the merits of the case in hand."

14. On careful consideration, this ruling of Hon'ble Supreme Court makes out that when the facts and circumstances of the case require positive exercise of discretion favouring a party to recall himself, in the interests of justice and if it is not abuse of process of the Court, it shall be entertained. Therefore, these observations in fact lend assistance to contention of the petitioners.

15. Therefore, in particular facts and circumstances of this case, when no justification is found for the learned trial Judge to refuse the request of the petitioners, the order under revision has to be set aside.

16. The learned counsel for the petitioners brought to the notice of this Court that no separate Civil Revision Petition has been filed against that part of the common order concerned to I.A.No.408 of 2018 relating to reopening the evidence on behalf of the petitioners. It is now well settled that an application for reopening need not be filed when trial is continuing, when evidence is being let in by the parties and when the suit is not posted for judgment, as such. Adverting to this proposition, the learned counsel for the petitioner relied on ***Sultan Saleh Bin Omer vs. Vijayachand Sirimal***[5]. In view of this legal position, it is not necessary that an application to reopen separately could have been filed in the trial Court. In as much as it is now felt desirable that P.W.1 be recalled for the purpose sought in I.A.No.409 of 2018, I.A.No. 408 of 2018 is unnecessary. Therefore, no separate Civil Revision Petition could have been presented against that part of the order relating to reopening the evidence on behalf of the petitioners.

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[5]. 1965(2) ALT 347

17. Thus, for the above reasons, this CRP has to be allowed.

18. In the result, the Civil Revision Petition is allowed setting aside the order of the trial Court. I.A.No. 409 of 2018 now stands allowed and P.W.1 is directed to be recalled. A neat copy of the notebook, which is sought to be introduced through P.W.1, shall be filed in the trial Court for convenience. The trial Court is directed to dispose of the suit within a period of two (02) months from the date of receipt of copy of this order. There shall be no order as to costs.

All pending miscellaneous petitions, if any, shall stand closed and interim orders, if any, shall stand vacated.

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M. VENKATA RAMANA, J

Dt: 02.03.2020
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HON'BLE SRI JUSTICE M. VENKATA RAMANA

CIVIL REVISION PETITION No. 690 of 2019

Dt: 02.03.2020

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