

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NOs.350 and 351 of 2023

COMMON ORDER:

Since the parties to the matters are the same and they arise out of the same suit, this Court deems it appropriate to dispose of these Civil Revision Petitions by way of a Common Order.

2. Aggrieved by the decrees and orders passed in Interlocutory Application Nos.630 of 2022 and 631 of 2022 in Original Suit No.153 of 2017 on the file of the Court of Principal Senior Civil Judge, Gajuwaka whereby the applications to reopen the matter and to recall P.W.1 for the purpose of further cross-examination were dismissed, the present Civil Revisions are filed under Article 227 of the Constitution of India.

3. The facts of the case that led to filing of the present Civil Revision Petitions are as follows:

i) The petitioner herein is defendant No.1, respondent No.1 is the plaintiff and respondent Nos.2 to 6 are co-defendants in O.S.No.153 of 2017 on the file of the Court of Principal Senior Civil Judge, Gajuwaka.

ii) Respondent No.1 herein, who is plaintiff, filed O.S.No.153 of 2017 seeking a preliminary decree directing defendant Nos.1 to 4 to divide the plaint schedule property into four equal shares with good and bad qualities and to allot one such share i.e., 1/4th share to the plaintiff

and to determine the damages against defendant No.6 for sanction of building plan to defendant No.1, who under defective title to be claimed in a separate proceedings. After completion of cross examination of P.W.2, when the matter was adjourned for defendants' evidence, the petitioner herein/defendant No.1 along with other defendants filed Interlocutory Application Nos.630 & 631 of 2022 under Order XVIII Rule 17 read with Section 151 CPC praying the Court to reopen the matter for further cross examination of P.W.1 and to recall P.W.1 for that purpose. The said applications were dismissed by order dated 03.01.2023. Aggrieved by the said orders, the petitioner herein, who is defendant No.1, has filed the present Civil Revision Petitions.

4. Heard Sri T.V.S.L.Narasimha Swamy, learned counsel for the petitioner and Sri S.Varada Rajulu, learned counsel for the respondent No.1/plaintiff.

5. Learned counsel for the petitioner, in elaboration to what has been stated in the grounds of revisions and the affidavit filed in support of the petitions, contended that, during the cross examination of P.W.1, certain crucial aspects were not put to the witness by the petitioner's counsel, which are essential for establishing the petitioner's defence. The subject matter was posted for defence side on 15.07.2022 and without giving proper opportunity to the defence side and posted for arguments on

05.09.2022. The Court below dismissed the said applications erroneously without properly considering the scope and purport of Order XVIII Rule 17 CPC. If the petitioner is not permitted to reopen the matter for further cross examination of P.W.1 and recall P.W.1 for that purpose, his valuable rights will be seriously prejudiced. Hence, prayed to allow the Civil Revision Petitions and consequently allow the Interlocutory Applications. In support of his contention, he relied on the decisions of the Hon'ble Apex Court in ***Ram Rati v. Mange Ram***¹ and ***K.K.Velusamy v. N.Palanisamy***². He also relied on the decision of this Court in ***Sreedhar Finance, represented by its Managing Partner, Ch.Brahma Rao v. Jurra Lingayya***³.

6. On the other hand, learned counsel for respondent No.1/plaintiff while reiterating the contents of the counter affidavits filed before the Court below, contended that after completion of plaintiff's evidence on 11.07.202, the matter was adjourned to 15.07.2022 for petitioners/defendants' evidence. However, the petitioner prolonged the matter until 26.08.2022 without adducing any evidence on his side. Consequently, the Court below closed the evidence of petitioner herein/defendant No.1 and posted the main suit to 05.09.2022 for

¹ (2016) 11 SCC 296

² (2011) 11 SCC 275

³ 1996 Law Suit (AP) 88

arguments. On 05.09.2022, the petitioner herein filed the above Interlocutory Applications. He further contended that no valid grounds were pleaded for reopening the evidence of P.W.1 and recalling P.W.1 for further cross examination. The Court below rightly dismissed the said applications. The petitioners have not raised any valid ground warranting interference of this Court. The Civil Revision Petitions are meritless and liable to be dismissed and accordingly prayed to dismiss the Civil Revision Petitions.

7. Perused the material available on record and considered the submissions made by learned counsel for the parties.

8. The contention of the petitioner is that during cross examination of P.W.1, certain crucial aspects were not put to the witness by the petitioner's counsel, which are essential for establishing the petitioner's defence.

9. Perusal of record shows that that ample opportunity was granted to the petitioner to cross-examine P.W.1 and to adduce evidence on his side. After closure of the plaintiff's evidence, the matter was posted for defendants' evidence. Despite sufficient time, the petitioner failed to lead evidence, resulting in closure of his side and posting of the suit for arguments. The applications seeking reopening and recall were filed only thereafter. No specific or compelling reasons have been assigned as to

why the so-called crucial aspects could not be put to P.W.1 during the earlier cross-examination.

10. It is settled law that the power under Order XVIII Rule 17 CPC is cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by the witnesses. It cannot also be used for the purpose of filling up lacunas in the evidence. No prejudice is caused to either party is also not a permissible ground to invoke Rule 17 CPC. No doubt, it is a discretionary power of the Court, but to be used only sparingly and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.

11. In the present case, P.W.1 was cross examined on 16.09.2019, whereas the present applications were filed in the year 2022, after a lapse of nearly three years. At such a belated stage, entertaining applications for reopening the evidence and recalling the witnesses does not arise, particularly in the absence of any satisfactory explanation for the inordinate delay. The decisions relied on by the petitioner are not applicable to the present facts of the case on hand.

12. In view of the above, this Court is of the view that the impugned orders are reasoned and do not suffer from any illegality or material irregularity and are liable to be dismissed.

13. Accordingly, the Civil Revision Petitions are dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

10.02.2026

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