

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION No.397 of 2023

Between:

1.S. Nagalaskhmamma, W/o Raghuram Reddy,
Hindu, aged 65 years, R/o Bhujanur Village,
Gadivemula Mandal, Kurnool District and another.

... Petitioners/Defendant Nos.5 and 6

And

S. Munishiva Reddy, S/o Late Narayana Reddy,
Hindu, aged 56 years, R/o D.No.1-41,
Orvakal Village and Mandal, Kurnool District.

... Respondent/Plaintiff

S. Rameswaramma, S/o Late S.Raghurami Reddy,
R/o Orvakal Village and Mandal, Kurnool District and two
others.

... Respondents/Defendant Nos.2 to 4

Counsel for the petitioners : Sri J.Janaki Rami Reddy

Counsel for respondents : Sri Varun Byreddy

ORDER:

Defendants 5 and 6 filed the above revision petition
against the order dated 24.01.2023 in I.A.No.04 of 2023 in
O.S.No.10 of 2018 on the file of the I Additional District Judge,
Kurnool District.

2. 1st respondent herein being the plaintiff filed suit O.S.No.10 of 2018 against one Sri Raghurami Reddy for recovery of amount on the strength of registered mortgage. Pending the suit, Raghurami Reddy died and defendant Nos.2 to 6 were impleaded as per I.A.No.286 of 2019.

3. Trail in the suit was commenced. P.W.1 was present on 22.07.2022. Since defendant Nos.2 and 6 are not ready, the suit was adjourned to 01.09.2022 on payment of costs of Rs.100/-. P.W.1 was cross-examined by the advocate appearing for defendant Nos.2 to 4. However, the advocate appearing for defendant Nos.5 and 6 failed to cross-examine P.W.1. Hence, the evidence of P.W.1 is closed on 01.11.2022.

4. Defendant Nos.5 and 6 filed I.A.No.4 of 2023 to recall P.W.1 for the purpose of cross-examination.

5. In the affidavit filed in support of the petition, it was contended that the suit was posted to 01.11.2022 for cross-examination of P.W.1. Due to ill-health advocate could not present before the Court and hence P.W1 was not cross-

examined by the counsel of D5 and D6. Thus, application was filed to re-open and to recall P.W.1.

6. Plaintiff filed the counter and opposed the application. Trial Court by order dated 24.01.2023 dismissed the application. Aggrieved by the same, the above revision is filed.

7. Heard Sri J. Janaki Rami Reddy, learned counsel appearing for the petitioner and Sri Varun Byreddy, learned counsel appearing for respondent No.1.

8. Learned counsel for the petitioners would contend that, non cross-examination of P.W.1 on 01.11.2022 is neither willful nor wanton. Since the counsel could not attend on that day, P.W.1 was not cross examined. Defendant Nos.5 and 6 are contesting the suit and cross-examination of P.W.1 is essential. However, trial Court without considering these aspects dismissed the application.

9. Learned counsel appearing for the 1st respondent, on the other hand, would contend that no valid reason was assigned by the petitioner to recall P.W.1. He also would submit that P.W.1 was cross-examined by the advocate appearing for

defendant Nos.2 to 4 on 01.11.2022. From 01.11.2022, the suit was adjourned to 23.11.2022. Thereafter, the application was filed on 20.12.2022. Defendants filed the application to drag on the proceedings.

10. The point for consideration is:

Whether the petitioners assigned proper reasons to recall P.W.1?

11. P.W.1 was present on 22.07.2022. Since the advocate appearing for defendant Nos.2 to 6 are not ready, the case was adjourned to 01.09.2022 by payment of costs of Rs.100/-. On 01.09.2022, P.W.1 was not present. Suit was adjourned to 27.09.2022. On 27.09.2022 also P.W.1 was called absent. At request, it was adjourned to 01.11.2022. On that day P.W.1 was present, however, since the counsel appearing for D5 and D6 was not present, cross examination was done on their behalf.

12. Reason assigned in the affidavit for recall of P.W.1 is that, advocate appearing for defendant Nos.4 and 5 is suffering from

his illness and hence, he could not cross-examine the witness. In the affidavit, it was specifically mentioned about the ill-health of the advocate.

13. The suit is for recovery of amount on the strength of registered mortgage. Defendant Nos.5 and 6 are contesting the suit by filing separate written statement. In the facts and circumstances of the case, trial Court ought to have exercised jurisdiction vested with it. Recalling of witnesses in the facts and circumstances will not cause any prejudice. The laches, if any, on the part of defendant Nos.5 and 6 in cross-examining P.W.1, trial Court could have imposed reasonable costs.

14. Considering the facts and circumstances of the case, order passed by the Trial Court in I.A.No.4 of 2023 is set aside. I.A.No.4 of 2023 stands allowed on payment of costs of Rs.2,000/- to the P.W.1. Petitioners shall pay the costs either on the next date of hearing or within a period of two(2) weeks from today and file receipt before the trial Court.

15. If the plaintiff declines to receive the amount, petitioners shall pay the amount to the District Legal Services Authority and file receipt. D5 and D6 shall cross-examine the witness on the next date of hearing or on the date fixed by the trial Court. If the defendant Nos.5 and 6 failed to cross-examine the witness on the next date of hearing, the order dated 24.01.2022 comes into operation.

16. With the above direction, the Civil Revision Petition is disposed of. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

SUBBA REDDY SATTI, J

Date : 01.05.2023
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