

KAUP020000642003



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AND CJM., UDUPI**

Present: Sri. Vignesh Kumar,
B.A. (Law), LL.M.

Prl. Senior Civil Judge & CJM.,Udupi.

Dated : This the 15th day of June, 2023

O.S.No.75/2003

Between:

HH Sugunendra Theertha
Swamier Sri.Puthige Mutt
and Another.

: Petitioners/ Plaintiffs

(Rep. by Sri. I.K.A., Advocate)

-Versus-

The State of Karnataka and
Others.

: Opponents/ D1 & D2

(Rep. by Sri.D.G.P., Advocate for D1,2.

D3- Dead.

Sri.V.M.S.U., Advocate for D3(a), 4 to 6)

ORDERS ON I.A.NO.XLIX & L

I.A.No.XLIX is filed under Section 151 of CPC to reopen the case for further plaintiff side evidence and I.A.No.L is filed under Order XVI, Rules 1 and 2 R/W Section 151 of CPC to permit the plaintiffs to examine additional 2 witnesses.

2. In the affidavit annexed to the IA's, it is averred that the examination of additional two witnesses on behalf of the plaintiff is very much essential for proper adjudication of the case. The two witnesses cited are experts in shastras and they are aware about the history of Krishna Mutt and Anantheshwara Temple. Hence it is prayed to reopen the case and permit plaintiffs to examine additional two witnesses.

3. Per contra, learned DGP appearing for the defendant No.1 & 2 has filed his objections contending that the applications are hit by inordinate delay, laches and culpable negligence. Only with an intention to drag on the matter. The present applications are filed. The plaintiffs cannot be permitted to fill up the lacuna's in

their case. The admissions given infavour of the defendants will be negated if the applicant is allowed to lead further witnesses. The witnesses mentioned in the applications are nothing to do with the dispute between the parties. Hence, it is prayed to dismiss the IA's with cost.

4. Heard both sides.

5. The following points would arise for my determination are;

1. Whether it is necessary to permit the plaintiffs to examine the cited witnesses by re-opening the case?

2. What order?

My findings to the above point is in the negative for the following:

REASONS

6. Point No.1: The records would show that the plaintiffs have already examined 5 witnesses and closed their side on 31-03-2021. Thereafter the Assistant

Commissioner of Kundapur was examined on behalf of defendant as D.W.1. His cross-examination got concluded on 16.01.2023. When the case was posted for arguments, copy of the stay order in W.P.No.19179/2022 on the file of Hon'ble High Court of Karnataka was produced wherein this Court is directed to defer the judgment. The said stay order has been continued by Hon'ble High Court of Karnataka. At this point of time the plaintiffs have preferred the present IA's.

7. Every party has a right to seek and obtain issue of summons to examine the witnesses until the suit is finally disposed on. However such measures should not be an attempt to fill up the lacuna's in the evidence. Learned counsel appearing for the plaintiff vehemently argued that the witnesses sought to be summoned are an experts in shastras and they have knowledge about the history of Krishna Mutt and Anantheshwara Temple. Whereas learned DGP appearing for the defendants would argue that there is nothing to show that the cited witnesses are an experts and there is no requirement of their examination. Upon perusal of the case record it is

forthcoming that already the plaintiff has examined 5 witnesses. The P.Ws.2 to 5 have been already examined by the plaintiff to prove the connection between Krishna Mutt and Anantheshwara Temple. In the evidence of said witnesses, the aspects regarding the customs prevalent amongst Krishna Mutt and Anantheshwara Temple is highlighted. In such circumstance the additional witnesses proposed to be examined will only repeat what the other witnesses on behalf of the plaintiffs have already deposed. The examination of proposed witnesses will only lead to duplication. Moreover, as rightly argued by learned counsel for defendants there is nothing on record to show that the proposed witnesses are experts in shastras and nothing is averred in the IA as to what aspect of the matter the proposed witnesses are going to depose. The Indian Evidence Act, considers the quality of witnesses and not its quantity. Merely examining additional two witnesses will not outweigh the materials infavour of the plaintiffs.

8. At this juncture it is necessary to refer to the decision of Hon'ble Supreme Court in the case of *K.K.Velusamy V/s. N.Palinisamy* **(2011) 11 SCC 275**

wherein the nature and scope of power to recall witness is examined by the Hon'ble Apex Court. It is held that the discretion to permit reopening of evidence and/or recalling of witnesses for further examination after evidence led by parties is concluded must be done in a conscious manner. It is held that the trial Courts should consider such application only if the evidence sought to be produced would assist in clarifying the evidence led on the issues or would lead to a just and effective adjudication, Thus it is held that the Court should also consider whether it should straightaway recall witnesses or it should first require proof of authenticity of evidence sought to be produced. Applying the said decision to the present case in hand, the examination of proposed witnesses may not be required for just and effective adjudication of the case. There is no reason mentioned by the plaintiff for the non production of these witnesses on earlier occasion and no proof of authenticity of evidence is offered.

9. The learned counsel for the plaintiffs vehemently argued that D.W.1 in his cross-examination at para 6 and 7 has expressed his ignorance about many customary practices prevalent in Krishna Mutt and

Anantheshwara Temple. Hence, it is argued that the proposed witnesses will be in a better position to depose about the practices prevalent in Krishna Mutt and Anantheshwara Temple. If at all D.W.1 has expressed his ignorance, it is for the plaintiff to take advantage of it. The admission if any given by D.W.1, does not entitle the plaintiffs to lead additional evidence at present. The provision to re-open and examine the witnesses cannot be taken to fill up the lacuna's if any arising in the evidence. In such circumstances there is lack of bonafide in the averments made in I.As.No.XLIX and L. Hence, **point No.1 is answered in the negative.**

10. Point No.2:- The Hon'ble High Court of Karnataka has directed this Court to defer the judgment but there is no embargo to hear the arguments. As argued by learned counsel for defendants this Court do not wish to come to a conclusion that these applications are filed only to drag on the proceedings but the applications are devoid of any merits. Hence, there is no need to impose cost. As per the findings given to the above point No.1, this court deems fit to pass the following:-

ORDER

I.A. No.XLIX filed under Section 151 of CPC, I.A.No.L filed under Order XVI, Rules 1 and 2 R/W Section 151 of CPC, are hereby dismissed.

No order as to cost.

(Vignesh Kumar)

Prl. Sr. Civil Judge and CJM.,
Udupi.