

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NOs.1085 & 1086 of 2024

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 common order dated 30.04.2024 passed in Interlocutory Application Nos.160 and 161 of 2024 in Original Suit No.173 of 2018 on the file of the Court of Principal Civil Judge (Senior Division), Nandyal, whereby the applications filed to re-open the suit to adduce further evidence on behalf of defendant No.2 for examination of surveyor and one third party and to summon them were allowed, 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 plaintiff, respondent No.1 is defendant No.2 and respondent No.2 is defendant No.1 in O.S.No.173 of 2018 on the file of the Court of Principal Civil Judge (Senior Division), Nandyal.

ii) The petitioner herein/plaintiff filed the suit in O.S.No.173 of 2018 for permanent injunction. After the completion of evidence on both sides and at the stage of arguments, defendant No.2 filed I.A.Nos.160

and 161 of 2024 under Order XVI Rules 5 & 7 and Section 151 CPC praying the Court to re-open the suit to adduce further evidence on his behalf and to summon Smt Gurram Estheramma and the surveyor of Nandyal Mandal to adduce evidence on his behalf.

iii) The said applications are opposed by the petitioner herein/plaintiff by filing counter denying the allegations and *inter alia* contending that the applications were filed only to protract the litigation. It is further contended that when the matter was adjourned for further submission of plaintiff's arguments, defendant No.2, without showing any sufficient cause or *bona fides*, filed these applications intentionally. If the said applications are allowed, it allow defendant No.2 to travel beyond the scope of the suit. Moreover, the burden of proof to establish possession of the suit schedule lies on the plaintiff, which is the primary point of determination to be adjudicated in the suit.

iv) After hearing both sides, the Court below allowed the said applications, by way of common order, subject to payment of costs of Rs.500/- payable to the plaintiff on the ground that no prejudice would be sustained to the plaintiff. Aggrieved by the said order, the petitioner herein/plaintiff filed the present Civil Revision Petitions.

4. Heard Sri N.Sai Akash, learned counsel, representing Sri V.Nitesh, learned counsel for the petitioner and Sri T.Ashok Srivastava, learned counsel for the respondent No.1/defendant No.2.

5. Learned counsel for the petitioner, in elaboration to what has been stated in the grounds of revisions and the counter affidavit filed before the Court below, submitted that the Court below failed to appreciate Order XVI Rules 5 and 7 in a right perspective. No valid reasons were stated for summoning the witnesses and the reasons mentioned are untenable and are insufficient. He further submitted that one the witnesses now sought to be summoned, Smt Gurram Estheramma died and the reasons mentioned for summoning the surveyor to prove the possession are unsustainable. He further contended that in a suit for injunction, it is for the plaintiff to prove that he was in possession of the property as on the date of filing of the suit, for which the defendant need not adduce any evidence, as the burden of proof always lies on the plaintiff. He further submitted that the applications were filed solely to protract the litigation, particularly at the stage of arguments. As such, the order impugned is erroneous, lack of cogent reasons and it is liable to be set aside.

6. On the other hand, learned counsel for respondent No.1/defendant No.2, while reiterating the contents of the affidavits filed in support of the Interlocutory Applications, contended that the plaintiff cannot oppose the summoning of witness *i.e.*, surveyor and that if the surveyor is summoned, no prejudice will be caused to the plaintiff. The plaintiff is claiming title by way of a registered sale deed executed by Gurram Estheramma, who had no right over it. Relying on the fabricated sale

deed, the plaintiff is claiming right, title and possession. To show that the petitioner/plaintiff is not in possession of the property, the surveyor, who surveyed the land earlier before filing the suit, is very much essential for better adjudication of the suit. The Court below rightly allowed the Interlocutory Applications and the petitioner has not raised any grounds warranting interference of the Court and prayed to dismiss the Civil Revision Petitions. In support of his contention, he relied on the decisions of High Court of Andhra Pradesh at Hyderabad in ***G.Balaiah v. G.Ramchander***¹, ***M/s Rouf & Sons Estates (Regd Firm) its Managing Partner P.Abdul Rouf Khan v. Palem Mallikarjuna Reddy***² and ***Sk.Rasool Bee v. Fathima Bee***³, the decision of Hon'ble Apex Court in ***K.K.Veluswamy v. N.Palanisamy***⁴ and also the decision of a coordinate Bench of this Court in ***Green Valley Educational Institutions v. Ramireddigari Subbareddy***⁵.

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

8. As could be culled out from the submissions made by learned counsel for the parties and material on record, the suit was filed in the

¹ MANU/AP/0577/1997

² 2012 SCC Online AP 81

³ 2004(2) APLJ 48

⁴ (2011) 11 SCC 275

⁵ 2022 SCC Online AP 615

year 2018 for the relief of permanent injunction and evidence of both sides had already been completed and the matter is at the stage of arguments. At this belated stage, respondent No.1/defendant No.2 sought to reopen the suit and summon the witnesses.

9. The law is well settled that though the Court possesses inherent power under Section 151 CPC to reopen evidence, such power must be exercised sparingly and only when the Court is satisfied that such evidence is necessary for a just decision of the case. The said power cannot be invoked to permit a party to fill up lacunae in its case or to protract the proceedings.

10. In the present case, a perusal of the affidavits filed in support of the applications shows that no convincing or sufficient reasons were assigned explaining why the witnesses could not be examined earlier during the course of trial. Further, one of the witnesses sought to be summoned, Smt. Gurram Estheramma, is stated to have died, which clearly shows the prayer for summoning her infructuous.

11. With regard to the examination of the surveyor is concerned, the application to summon him is based on the fact that he had surveyed the land prior to filing of the suit, at the time of acquisition. The contention of respondent/defendant No.2 is that, out of Ac.0.80 cents, an extent of

Ac.0.26 cents were acquired by the Government and during that period the said surveyor had surveyed the land and that his evidence is necessary to show possession. Such vague statements do not show that the proposed evidence is necessary for deciding the case properly.

12. The suit is for permanent injunction, wherein the question for determination is whether the plaintiff was in possession of the suit schedule property as on the date of filing of the suit. The evidence required for adjudication of such issue has already been adduced by the parties during trial. Allowing the suit to be reopened at the stage of arguments, without sufficient reasons, would unnecessarily delay the disposal of the case and cause prejudice to the other party. The trial Court, while allowing the applications, merely observed that no prejudice would be caused to the plaintiff. However, the order does not disclose any cogent reasons as to why the proposed evidence is necessary for effective adjudication of the issue. The petitioner has made out a case warranting interference of this Court. The decisions relied on by respondent No.1/defendant No.2 are not applicable to the present facts of the case on hand.

13. In view of the above, the order passed by the Court below is erroneous and is liable to be set aside.

14. Accordingly, the Civil Revision Petitions are allowed setting aside the common order dated 30.04.2024 passed in Interlocutory Application Nos.160 and 161 of 2024 in O.S.No.173 of 2018 on the file of the Court of Principal Civil Judge (Senior Division), Nandyal. Consequently, I.A.Nos.160 and 161 of 2024 stand dismissed. The Court below is directed to proceed with the suit from the stage of arguments and dispose of the same in accordance with law as expeditiously as possible. There shall be no order as to costs.

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

JUSTICE RAVI CHEEMALAPATI

19.02.2026

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