

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.1478, 1639, 1653 AND 1740 OF 2019

COMMON ORDER:

These civil revision petitions are filed under Article 227 of the Constitution of India, challenging the order passed in the petitions filed under different provisions of law, challenging the interlocutory orders which are tabulated hereunder:

S.No	CRP No		IA No	In O.S.No	Provision of law under which I.A. is filed
1	1478 2019	of	839 of 2018	78 of 2012	Order XVI Rule 1 and Section 151 C.P.C
2	1639 2019	of	840 of 2018	78 of 2012	Order XVI Rule 1 and Section 151 C.P.C
3	1653 2019	of	838 of 2018	78 of 2012	Section 151 C.P.C
4	1740 2019	of	841 of 2018	78 of 2012	Order XVI Rule 1 and Section 151 C.P.C

As the petitioners and respondents are one and the same in all the four civil revision petitions filed in O.S.No.78 of 2012 passed by the Senior Civil Judge, Puttur on 07.03.2019, dismissing the petitions filed by the petitioners, the main order was passed in I.A.No.838 of 2018 and as a consequential of dismissal, I.A.Nos.839, 840 and 841 of 2018 were also dismissed. Therefore, it is appropriate to advert to the allegations made in the affidavit filed in support of I.A.No.838 of 2018, which is the subject matter of C.R.P.No.1653 of 2019.

I.A.No.838 of 2018 was filed under Section 151 of Civil Procedure Code to reopen the evidence on behalf of the petitioners

in the suit to refer the disputed signatures on Ex.B-2 unregistered Will dated 24.01.1988 and compare those signatures with signatures of late G. Chengama Naidu, available on the registered sale deed dated 10.04.1987 vide Document No.1027/2018 executed in favour of Kampalli Anjaneyulu Naidu s/o K. Siddama Naidu of Rappunjayarajupuram village of SR Puram Mandal and the signature on Document No.1050/1987 executed in favour of Bhupathy Venkatapathy Naidu to the expert for comparison and his opinion, alleging that the suit was posted for arguments and the plaint schedule properties are the ancestral properties of the petitioners, they were registered in the name of father of the petitioners namely G. Lokanadhan Naidu s/o G. Chengama Naidu. The defendants filed unregistered Will dated 21.01.1988 marked as Ex.B-2 through D.W.1 and it is forged document. The defendants with active collusion with D.Ws. 2 and 3 forged the signature of their paternal grandfather namely G. Chengama Naidu to knock away the plaint schedule properties to evade their respective share for the reasons best known to the defendants and their kith and kin. The petitioners grandfather namely G. Chengama Naidu never executed Ex.B-2 Will during his lifetime and the defendants, witnesses along with others with active collusion have forged signature of G. Chengama Naidu on the alleged Will under Ex.B-2 for the purpose of defeating the claim of these petitioners in the main suit and that G. Chengama Naidu expired long back. The signatures of G. Chengama Naidu are available on various registered sale deed executed by him and they are as follows:

1. Registered Sale Deed dated 25.06.1987 executed by Gudeti Chenganma Naidu in favour of Gudeti Sidhama Naidu vide document No.1024/1987.
2. Registered Sale Deed dated 25.06.1987 executed by Gudeti Chenganma Naidu in favour of Seenu Reddy vide document No.1025/1987.
3. Registered Sale Deed dated 25.06.1987 executed by Gudeti Chenganma Naidu in favour of Kampalle Pedhabha Naidu vide document No.1026/1987.
4. Registered Sale Deed dated 25.06.1987 executed by Gudeti Chenganma Naidu in favour of Kampalle Anjaneyulu Naidu vide document No.1027/1987.
5. Registered Sale Deed dated 18.07.1987 executed by Gudeti Chenganma Naidu in favour of Pathapati Parijathan Naidu and another vide document No.1148/1987.
6. Registered Sale Deed dated 18.07.1987 executed by Gudeti Chenganma Naidu in favour of Balla Venkatapathy Naidu vide document No.1149/1987.
7. Registered Sale Deed dated 18.07.1987 executed by Gudeti Chenganma Naidu in favour of Bhuyapti Venkatapathy Naidu vide document No.1150/1987.

Despite the request made by these petitioners to provide a copy of the sale deeds executed by G. Chengama Naidu in favour of different persons shown hereinabove, they refused to provide the Photostat copies at the instance of the respondents/defendants.

However, the Photostat copy of the sale deeds executed in favour of Kampalle Anjaneyulu Naidu of Rappunjayarajupuram Village of SR Puram Mandal executed by the grandfather of these petitioners is now in the possession of G. Varradharajulu Naidu s/o G. Rama Naidu, Pullur Cross, SR Puram Post and Mandal, Chittoor District. Filing of a separate application to summon documents containing the signatures available with the Sub-Registrar's Office, Karvetinagaram and thumb impression Register which are kept in the above said office has to be sent to writing expert for opinion as D.Ws. 2 and 3 are behind the litigations on behalf of the defendants. The witness and scribe of Ex.B-2 are close associates and relative of defendant Nos. 1 to 3 and therefore to prove Ex.B-2 is a forged document, allegedly executed by paternal grandfather of the petitioners i.e. G. Chengama Naidu, the opinion of the expert on examination of disputed signatures on Ex.B-2 with the admitted signatures available on the documents is necessary.

The petitioners filed interlocutory applications for reopening the evidences of the petitioners for the above purpose and requested to pass appropriate order.

The petition was opposed by the second respondent raising several contentions, mainly contending that the properties stand in the name of the father of the defendants and claiming their title under unregistered Will dated 24.01.1988 marked as Ex.B-2 through D.W.1 and the same was executed by G. Chengama Naidu. However, in the cross-examination of P.W.1, he pleaded innocence about execution of the Will marked as Ex.B-2 in the cross-examination of the defendants and where she admits that

suit properties are self acquired properties by G. Chengama Naidu. Therefore, G. Chengama Naidu in his sound and disposing state of mind executed the Will Ex.B-2, bequeathing the property in favour of the defendants and they are entitled to claim the property exclusively.

It is also specifically contended that the petitioners filed I.A.Nos. 47,48,49 of 2018 to reopen, recall and receive the documents and adduce evidence. The Court dismissed the petitions on 15.02.2018 on the ground that the said petitions are hit by principles of *res judicata*, as they already filed petitions in the year 2011 to 2015.

O.S No.78 of 2012 was posted to 17.04.2018. But, the Presiding Officer was transferred. Therefore, the suit was reopened and posted to 26.04.2018. Thereafter, it underwent 19 adjournments and later, the suit was reopened by the Presiding officer of the Court suo moto and that the arguments were heard and the judgment was not pronounced. Therefore, there is no justification to allow I.A.Nos.839, 840, 838 and 841 of 2018 at this stage, in view of the law declared by the Rajasthan High Court in **Ram Bilas v. Board of Revenue and others**¹ and requested to dismiss the petition.

The Senior Civil Judge, Puttur, dismissed the petition recording reasons vide impugned order dated 07.03.2019. The specific reason recorded by the Senior Civil Judge, Puttur is that, the suit was heard more than once, judgment was reserved, but once on account of transfer by the Presiding Officer it was

¹ 2000 (2) WLC 505

reopened suo moto and again the suit went on 19 adjournments, arguments were heard and suit was reserved for judgment, again reopened the suit by the Presiding Officer of the Court suo moto and now it has come up for advancing arguments. Taking advantage of the reopening of the suit, these petitioners filed the civil revision petitions to reopen and recall. It is also noted that I.A.Nos.839, 840, 838 and 841 of 2018 were filed by the petitioners for different reliefs and if, these applications and several applications are allowed at this stage, it would cause prejudice to the parties and that the petitioners did not assign specific reason for reopening the evidence and discussed the law declared by the Courts in the last paragraph of the judgment, to conclude that they are not applicable to the case on hand.

Aggrieved by the order, the revision petitions are filed on various grounds, mainly on the ground that the order passed by the Trial Court is erroneous, since these petitioners are contending from the beginning that Ex.B-2 is forged document and the earlier applications were dismissed when the argument was heard and reserved for judgment, the Court cannot reopen the evidence. But, now the Presiding officer himself suo moto reopened the suit and posted the suit for argument. In such case, the petitioners are entitled to file a petition for reopen. Dismissal of I.A.Nos. 47,48,49 of 2018 on the ground that arguments were heard and similar applications filed earlier were also dismissed is not a ground to dismiss I.A.Nos.839, 840, 838 and 841 of 2018 and prayed to set-aside the orders passed by the Court below in I.A.Nos.839, 840, 838 and 841 of 2018.

During hearing, Sri V. Nitesh, learned counsel for the petitioners reiterated the contentions urged in the petitions, whereas, learned counsel for the respondents opposed the petition on the ground of delay and laches.

Learned counsel for the petitioners also placed on record, copy of the order passed by the Senior Civil Judge, Puttur in I.A.Nos. 47,48,49 of 2018 in O.S. 78 of 2012, for perusal of this Court during hearing.

Considering rival contentions, perusing the material available on record, the point that arises for consideration is:

“Whether the Court can reopen the evidence of the petitioners to enable them to file applications for recall, summoning of witnesses and documents and to refer the disputed signatures on Ex.B-2 ‘Will’ to the expert for comparison with admitted signatures of G. Chengama Naidu on sale deeds?”

P O I N T:

Suit O.S.No.78 of 2012 was filed in the year 2012 and it is an undisputed fact that both the parties adduced their evidence before the Senior Civil Judge, Puttur long back. The petitioners filed I.A.Nos. 47,48,49 of 2018 to reopen, recall and receive the documents and these petitions were dismissed vide docket order dated 15.02.2019 and the copy of the order is also placed before this Court. Even according to the copy of the order placed before this Court, I.A.Nos. 47,48,49 of 2018 which were filed by the petitioners were dismissed on the ground of delay and laches and by applying the principle enunciated by this Court in **Smt. Gollu**

Satyavati v. Kilaparthi Apparao², wherein, this Court while considering the scope of Order XVIII Rule 2 C.P.C, held that, as per Order XVIII Rule 2 C.P.C, on the day fixed for hearing of the suit or on any other date to which the hearing is adjourned, the party having the right to begin, shall state its case and produce any evidence in support of the issues which he is bound to prove. It is implied from this provision that at the commencement of trial, the party has to be ready with his witnesses, so that their examination will go on till it is completed unhindered. It has now become a practice that the plaintiff or the defendant comes out with requests, much after closing their side's evidence, by pleading some reason or the other, for re-opening the evidence. Though fair amount of discretion is vested in the Courts to consider such requests, unless strong reasons are pleaded and the Court is satisfied with such reasons, it is not desirable to reopen the evidence, merely on the parties making such requests. It is needless to observe that the suits which are kept pending for years, would get further delayed if the courts accept requests for re-opening of evidence, for the mere asking, without the party making out a strong case for such reopening.

By applying the principle laid down in the above judgment, the Court below dismissed I.A.Nos. 47,48,49 of 2018.

Learned counsel for the petitioners also adverted to the principle laid down in **Arjun Singh v. Mohindra Kumar and others**³.

² 2018 (1) ALT 503

³ AIR 1964 SC 993

The reason for dismissal of I.A.Nos. 47,48,49 of 2018 filed by the very same petitioners for the same relief was that the suit was reserved for judgment after hearing arguments of both the counsel. But, on account of transfer of the Presiding Officer, before pronouncing the judgment, the suit was reopened and later, arguments were heard by the successor Presiding Officer after 19 adjournments. But for one reason or the other, the present Presiding officer also again reopened the suit after hearing the arguments without pronouncing the judgments. These circumstances enabled these petitioners to file appropriate applications to overcome the principle laid down in **Arjun Singh v. Mohindra Kumar and others** (referred supra), as the suit is at the stage of hearing arguments.

The undisputed facts on record clearly disclosed that, on account of inability of the Presiding officer who was transferred and the present Presiding Officer, who adjourned the suit for 19 times, kept the matter pending and heard the arguments, but not reserved for judgment. Apart from that, the arguments were heard by three Presiding Officers, including the present Presiding officer and the judgment was not pronounced. Therefore, it is the fault of the Presiding officers, the petitioners taking advantage of the same, filing successive applications one after the other. If, these applications are allowed at this stage, it is nothing but abuse of process of the Court, since the arguments in the suit were heard by three Presiding Officers, earlier including the present Presiding Officer.

Learned counsel for the petitioner Sri V. Nitesh contended that I.A.Nos. 47,48,49 of 2018 were dismissed on the sole ground that the judgment in the suit was reserved by the Presiding Officer. But, on account of reopening the suit for further arguments, by the present Presiding Officer, the present petitions are filed. When the suit was heard by three Presiding Officers and the petitions were earlier dismissed, I.A.Nos.839, 840, 838 and 841 of 2018 for reopening is impermissible, as it amounts to abuse of process of the Court.

Though the Courts are bound to afford reasonable opportunity to adduce evidence, but such liberal approach in granting adjournments cannot frustrate the very purpose of speedy justice, enabling the frivolous litigants to drag on the proceedings for years together. That too, the parties to the suits are not entitled to consume valuable time of the Court for more than three adjournments to adduce evidence, as per the amended provisions of Civil Procedure Code. But, the Courts are virtually not following the amended provisions of Civil Procedure Code and granting time liberally. The liberal attitude of the Presiding Officers of the Courts is giving scope for filing successive applications one after the other for one reason or other causing hindrance to the disposal of the suit and other proceedings by the competent courts. Even now, the suit is at the fag end of disposal, except hearing and pronouncement of judgment.

It is the contention from the beginning that the respondents set up a registered will allegedly executed by G. Chengama Naidu in favour of the father of the defendants and claimed absolute

rights over the property as legatee under the 'Will', the written statement was filed long back almost about six years ago, issues were framed, the suit went on trail and the witnesses were examined. But, the petitioners conveniently maintained silence and woke up from their slumber after reserving the suit for judgment by the earlier Presiding Officer, who was transferred from the Court to other station, filed applications which ended in dismissal, as no revision was filed against the judgment. But, on account of transfer of the Presiding Officer, the successor Judge having no other alternative reopened the suit, but conveniently adjourned for more than 19 times, which is nothing but denial of speedy justice, a fundamental right guaranteed under Constitution of India.

Since the earlier petitions were dismissed, though on different grounds, the present interlocutory applications after advancing arguments before three Presiding Officers successively, cannot be permitted. Therefore, the finding of the Trial Court that the petitions at this belated stage to reopen the evidence and almost after two years from the date of closure of evidence, advancing arguments before three Judges is impermissible and such finding cannot be interfered by this Court while exercising limited jurisdiction under Article 227 of the Constitution of India.

On overall consideration of the facts and circumstances of the case, including hearing arguments of the counsel, thrice by three Presiding Officers and reopening the suit without pronouncing the judgment, gave scope for these petitioners to file I.A.Nos.839, 840, 838 and 841 of 2018 and conveniently abused

process of the court by filing successive applications, though earlier applications I.A.Nos. 47,48,49 of 2018 were dismissed.

In such circumstances, this Court must cautiously deal with the applications to avoid further delay when the petitioners were denied similar relief and dragged the proceedings in the suit successfully for more than two years, filing various applications one after the other, disabling the Presiding Officer to proceed to dispose of the suit. Hence, I find no ground to interfere with the orders passed by the Court below and consequently, C.R.P.No.1740 of 2019 is dismissed.

In view of the detailed order passed in C.R.P.No.1740 of 2019, other consequential orders, which are subject matter of revision petitions viz., C.R.P.Nos.1478, 1639 and 1653 of 2019 shall also stand dismissed.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE M.SATYANARYANA MURTHY

Date: 30.08.2019

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