K. Bharathamma vs Bandaru Sakku Bai on 4 August, 2026

2026 INSC 795 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS._____ OF 2026
(Arising out of SLP (C) Nos. 2744-2746 of 2024)

K. BHARATHAMMA …APPELLANT

VERSUS

BANDARU SAKKU BAI
AND OTHERS …RESPONDENTS

JUDGMENT

N.V. ANJARIA, J.

Leave granted.

2. In the present three appeals, the challenge is directed against common order dated 15.09.2023 of the High Court for the State of Telangana at Hyderabad1, whereby the High Court disposed of three Civil Revision Petitions filed by the defendant No.1-appellant herein, in the proceedings of Original Civil Suit No. 489 of 2010, renumbered as Original Suit No. 1302 of 2022, before Hereinafter, "High Court" learned Additional Senior Civil Judge, Medchal-Malkajgiri District2.

2.1 The three Revision Petition Nos. 458 of 2023, 496 of 2023 and 621 of 2023 arose out of the orders, all dated 08.12.2022, passed by the Trial Court in Interim Application3 No. 716 of 2022, I.A. No.717 of 2022 and I.A. No.718 of 2022, filed by the original plaintiffs-respondents herein. I.A. No.716 of 2022 was an application under Order XVIII Rule 17, Code of Civil Procedure, 19084 seeking to recall PW-1 for marking document in the evidence, whereas I.A. No.717 of 2022 and I.A. No.718 of 2022 were filed under Section 151, CPC and under Order VII Rule 14, CPC respectively praying to reopen the plaintiffs' evidence and to receive documents as per the list of documents, respectively.

2.2 The Trial Court allowed the interim applications by order dated 08.12.2022. When the appellant-original defendant No.1 challenged the said orders of the Trial Hereinafter, "Trial Court" Hereinafter, "I.A." Hereinafter, "CPC" Court, the High Court disposed of all the three revision petitions by modifying the orders dated 08.12.2022 passed in three interim applications by inter-alia directing the Trial Court to complete the exercise of recalling PW-1 and reopen the evidence of PW-1 and further to mark the documents within stipulated time. Appellant-defendant No.1 was directed to complete the process within the time indicated. The applicants of the interim applications were asked to pay the cost of Rs.20,000/- to the respondents.

3. Before adverting to the pleadings in the Interim Applications and the prayers made therein, in order to have the proper context, the facts relating to the suit may be set out. By instituting the suit in the year 2010, the plaintiffs- respondents herein prayed for declaration that they were the absolute owners of the suit properties mentioned in Schedules A, B and C of the plaint bearing House No.11- 71/2 (new), Old No.8-5, admeasuring 400 sq.yds., No.11- 71/3 (new), Old No.5-48, admeasuring 200 sq.yds. and 11- 71/4 (new) and Old No.8-68, admeasuring 200 sq.yds. in Survey No.433 to 438 and 448 to 452, situated at Ghatkesar village and Mandal, R.R. District. It was further prayed to declare that the sale deeds dated 21.05.1987 and 31.11.1987, executed by defendant Nos. 2 and 3 in favour of defendant No. 1 in respect of the land to the extent of 400 square yards, were null and void. It was next prayed to perpetually injunct the defendants and their men from interfering with the possession of the plaintiffs in respect of the suit properties.

3.1 The case of the appellant herein who is defendant No.1 in the suit has been, inter-alia, that the appellant purchased Plot Nos.7 and 8 by way of two registered sale deeds in the year 1987 as stated above. It was the case that the appellant has been in uninterrupted possession of the suit properties for more than last 23 years. It appears that the appellant had also filed Original Suit No.348 of 1988 against the plaintiffs in the Court of Principal District Munsif, R.R. District, wherein the decree of perpetual injunction dated 21.11.1990 was passed against the plaintiffs, in operation till date. In view of the decree in favour, the appellant obtained a sanction to construct compound wall, two rooms and a bathroom on the said property. Pursuant to the permission granted by the Gram Panchayat, the construction was stated to have been carried out. Writ Petition No.23459 of 2001 came to be filed by the appellant against the plaintiffs seeking to implement the aforementioned decree for injunction dated 21.11.1990. The competent police authority was directed by the court to implement the injunction decree.

3.2 The respondents-original plaintiffs thereafter filed the instant proceedings of Original Suit No.489 of 2010 (New No.1302 of 2022) for the relief of declaration etc. as mentioned above. In the written statement, the appellant- defendant No.1 pleaded that he was a bona fide purchaser and further he had purchased two plots by two registered sale deeds, that they were accordingly the lawful owners in possession thereof and that at no point of time had raised any dispute in respect of the title of the appellant over the said plots.

3.3 The plaintiffs put forward the claim that they had been residing in the suit properties from 1970 onwards. The appellant-defendant No.1 denied the existence of any house property and also denied the alleged door numbers. The appellant-defendant No.1 filed I.A. No.5 of 2017 seeking to appoint an Advocate Commissioner to ascertain the status, to inspect external features of the suit properties, which, however, was opposed by the plaintiffs by filing counter affidavit.

3.4 In course of the proceedings, the plaintiffs admitted that no house existed on the properties in question. Based on the above admission of the plaintiffs, the Trial Court did not entertain I.A. No.5 of 2017. Docket Order dated 16.02.2018 was passed by the Trial Court to dispose of I.A. No.5 of 2017. The order reads as under, “Heard, both sides. The respondent filed counter. In the counter para No.5, the respondent admitted that the houses were collapsed in the heavy rents of 2016. Hence, there is no house existing in the plaint schedule property. When the respondent admits that

there is no structure existing in the suit schedule property. Nothing needs to be observed by the advocate commissioner in the suit schedule land. Hence, I feed nothing can be added by appoint advocate commissioner. Hence, the petition is closed. No costs." 3.5 The suit proceedings progressed, recording of evidence of both the sides was completed and at the stage when final arguments were heard before the court and the arguments of the side of the appellant were concluded, the respondents preferred the aforesaid three Interim Applications being I.A. No.716 of 2022, I.A. No.717 of 2022 and I.A. No. 718 of 2022. Thereunder, the plaintiffs sought to reopen the evidence for leading further evidence which was the prayer in first two interim applications whereas the prayer in I.A. No.718 of 2022 was to receive the documents in the proceedings as per the list by condoning delay. 3.6 The pleadings and the grounds in support of the prayers in the three applications were almost identical and travelled parallel. What was pleaded was inter-alia that while arguing the case, the defendant raised new pleas which were not found in the written statement and the evidence, in particular with regard to existence of houses on the suit properties along with the house numbers. It was further stated that the plaintiffs-applicants had filed number of documents, however, further documents with regard to the existence of the house numbers were to be filed as per the legal advice, and that certain documents relating to the house showing its existence were originally received by the Gram Panchayat, which later came to be converted into Municipality.

3.7 The plaintiffs-applicants wanted the documents relating to the house number of the subject matter properties made available by the Municipality, documents relating to District Panchayat Officer dated 18.07.2018 as well as demand register for the years 2017 and 2018. It was prayed that in view of such circumstances, the evidence of plaintiffs may be permitted to be reopened. 3.8 The Trial Court allowed all the three applications by separate orders dated 08.12.2022 with similar and identical reasoning. The Trial Court noted that the issues were settled, that both the parties had adduced their evidence and further that on behalf of the plaintiffs, Witness Nos.1 to 4 were examined and that Exhibits A1 to A35 were marked. The Trial Court further observed that PW-1 had failed to produce certain documents showing house numbers of the properties. It was observed that though it was at the fag end of the suit, however, since no prejudice would be caused to the respondents if the prayers were allowed, the evidence of PW-1 was permitted to be reopened.

3.9 The High Court modified the orders passed by the Trial Court in the said three interim applications. The High Court passed the following modified directions, essentially exercising powers under Order XVIII Rule 17, CPC, "a. The Court below is directed to complete the entire exercise of recalling and reopening the evidence of PW-1 and marking of the said documents within a period of ten (10) days from the date of receipt of a copy of this order.

b. The petitioner herein is directed to complete the cross- examination of PW-1 within one week thereafter.

c. The respondent Nos. 1 to 10 herein who are the petitioners in the underlying interlocutory applications i.e., I.A. No.716 of 2022, I.A. No. 717 of 2022 and I.A. No.718 of 2022, are directed to pay Rs.20,000/- to the petitioner herein towards costs."

4. Heard learned counsel Mr. C. Mukund along with learned advocate on record Mr. Bijoy Kumar Jain for the appellant and learned advocate on record Mr. Mehmood Umar Faruqui for the respondents.

5. In passing the impugned modified directions, the High Court has essentially invoked the provision of Order XVIII Rule 17, CPC. The provision reads as under, "Order XVIII Hearing of the Suit and Examination of Witnesses

17. Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit." 5.1 A bare reading of the aforesaid provision makes it obvious that the right under the Rule to put a question at any stage of the suit or recall any witness for that purpose is given to the court. The court can put questions to the witness. No cross-examination is ordinarily open without leave on the answers to the questions put by the Judge. The scheme and object of the provision suggest that the power to recall a witness is in the realm of discretion of the court. 5.2 In Vadiraj Naggappa Vernekar (Dead) through LRs vs. Sharadchandra Prabhakar Gogate5, this Court highlighted the matters to be considered for invoking the (2009) 4 SCC 410 provision and inter-alia observed that the power under the provision of Order XVIII Rule 17, CPC can be invoked to enable the court to clarify any doubt that may have arisen in course of the examination of a witness. A witness may be recalled by the court on its own motion or on an application by any party to the suit.

5.3 The ambit of Order XVIII Rule 17, CPC, after deletion of Rule 17A with effect from 01.07.2002 came to be explained in K.K. Velusamy vs. N. Palanisamy6. Rule 17A of Order XVIII, CPC, as then existed, expressly provided for and permitted the reopening of the evidence and recalling of a witness for further examination or cross- examination. Observing inter-alia that after deletion of Rule 17A of Order XVIII, CPC, such power could be drawn from Section 151, CPC, however, to be exercised to deal with any particular procedural aspect not expressly or impliedly provided for in the CPC.

5.4 In Bagai Construction through its Proprietor Lalit Bagai vs. Gupta Building Material Store7, this Court 6 (2011) 11 SCC 275 7 (2013) 14 SCC 1 observed that the scope and object of Order XVIII Rule 17, CPC, was to enable the court to clarify doubts regarding evidence led by the party. It was further stated that the provision was not meant to fill up the omissions in the already adduced evidence. It was held that the power to recall a witness who has been examined earlier cannot be exercised for further examination-in-chief or for adducing additional material or evidence, for, such nature of power was available under Order XVIII Rule 17A, CPC, which has been since deleted.

5.5 Several decisions of this court including K.K. Velusamy (supra) and Vadiraj Naggappa Vernekar (supra) have consistently laid down that Order XVIII Rule 17, CPC is not to be utilised to permit a party to fill up lacunae in the evidence. In Vadiraj Naggappa Vernekar (supra), this Court stated thus, "The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined." (Para 25) 5.6 In Shubhkaran Singh vs. Abhayraj Singh and Others8, the court stated that the power under this provision should not be exercised by the court

lightly. The rule is that the power which is in nature of discretion should be used sparingly and in exceptional cases. The court read the provision of Order XVIII Rule 17, CPC, along with Section 165 of the Evidence Act, 1872 which provides that a Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he may think fit in any form at any time to any witness.

5.6.1 As per Section 165 of the Evidence Act, the parties cannot raise any objection to any such question which may be put by any Judge, nor can cross-examine any witness upon any answer given in reply to any question asked by the Judge, without the leave of the court. It was observed that when the provision of Order XVIII Rule 17, CPC is considered along with the provisions of Section 165 of the Evidence Act, what is suggested is that the power to recall 8 2025 SCC OnLine SC 1028 and re-examine the witness is exclusively that of the court trying the suit.

5.7 A frequent resort to use of Order XVIII Rule 17, CPC, has the tendency to develop into an abuse of process of the court and procrastination of litigation. The court should not allow this provision to become a handy tool for a party to the suit proceedings to prolong the litigation. This aspect was highlighted by this Court in Gayathri vs. M. Girish9, in which the court emphasized on completion of trial within a time schedule, observing that the interlocutory applications containing prayers for reopening of the evidence and recalling of witnesses have to be considered only in compelling facts and on acceptable reasons.

5.7.1 It was therefore observed in K.K. Velusamy (supra) that the power under Order XVIII Rule 17, CPC as also under Section 151, CPC, is not intended to be used in a routine manner and merely for askance. If permitted to be 9 (2016) 14 SCC 142 so used, it would defeat the very purpose of expediting the trial, in addition that a dishonest litigant would gain undue advantage by prolonging the proceedings under the pretext of recalling of witnesses or reopening of evidence. 5.8 It is laid down as trite principle that the provision of Order XVIII Rule 17, CPC, cannot be invoked on the spacious ground that recalling the witness or reopening the evidence would not prejudice the other side. In Vadiraj Naggappa Vernekar (supra), the court observed thus, “The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.” (Para 28) 5.9 This Court in Ram Rati v. Mange Ram (Dead) through Legal Representatives and Others10, reemphasized that the power under this Rule cannot be invoked to fill up the gaps in the evidence already led or on the ground that no prejudice would be caused to the parties (2016) 11 SCC 296 thereby. In the said case, this Court took the exception to the order of the trial court, where the trial court exercised the powers on the consideration that recalling of witness was necessary for left out points.

5.9.1 The Court observed thus, “The settled legal position under Order 18 Rule 17 read with Section 151 CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.” (Para 18)

6. Summing up on the scope, nature and applicability of the provision of Order XVIII Rule 17, CPC, on the basis of the provisions of law laid down in the judicial decisions highlighted above, this

provision is in the nature of power- cum-discretion vested in the court. It aims to become an aid to the court in the adjudicating process of the suit. The provision is in the nature of a facilitator to the court in the suit proceedings, to be used and invoked within the discipline of the trial and within the bounds of the rules of evidence.

6.1 The parameters for invocation and use of Order XVIII Rule 17, CPC, are thus well-established. It is not meant for a routine exercise. Nor it is a provision which can be employed on mere asking by a party, unless the court wants any clarification on any aspect of the evidence already led in the proceedings. Though the provision could be invoked at the instance of a party to the suit, basically and essentially it is the discretionary power to be exercised by the court itself. This provision can be put into play neither by the party nor by the court itself to permit to fill up the gaps, omissions or lacunae in the evidence. 6.2 It is not permissible that the evidence by a party already led and settled is allowed to be improved by reopening the evidence or recalling the witness under this Order of CPC. The provision is not a tool whereby a party can embellish the evidence, fill in the omissions therein or refine the evidence at a later stage.

6.3 Also, it is no valid yardstick to be employed for permitting reopening the evidence or allowing recalling of a witness that such a course would not prejudice any party. It is no valid ground for invoking the powers under Order XVIII Rule 17, CPC that a party to the proceedings will not be prejudiced. Not the absence of prejudice but an independent justification must exist before the court can legitimately take resort to Order XVIII Rule 17, CPC. 6.4 In Vadiraj Naggappa Vernekar (supra), the appellants sought to introduce the evidence by recalling of witnesses which were available at the time the affidavit of such witnesses were prepared. Neither new evidence was introduced nor new facts were discovered subsequently. The court stated that it was not a case for recalling of the witnesses.

6.5 The following observations made in Vadiraj Naggappa Vernekar (supra) stand close to the facts and circumstances of the present case, “As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.” (Para 26)

7. The facts in the instant case show that when the plaintiffs filed interim applications for reopening the evidence and recalling witnesses under Order XVIII Rule 17, CPC, the issues in the suit were settled and after closure of the evidence, the final arguments had travelled beyond half-way. Apart this aspect, what becomes important is that on behalf of the plaintiffs, PW-1 to PW-4 were already examined and Exhibits A1 to A35 were marked. Questions were put to PW-1 during cross-examination about house numbers of the suit properties and what was pleaded by the plaintiffs that there were some admissions about failure of PW-1 in filing certain documents showing the house numbers and that they had not filed such documents. It was further stated that PW-3 and PW-4 who were also examined and that all the witnesses on the side of the plaintiffs had denied the suggestion that the properties with the house numbers were not in existence.

7.1 The above position obtained had the backdrop of plaintiffs' filing I.A. No. 5 of 2017 seeking to appoint Advocate Commissioner to ascertain the existence of properties. However, by Docket Order dated 16.02.2018 aforementioned, the said interim application was closed by noting the admission of the respondents that the houses were collapsed during heavy rains in the year 2016 and that no house mentioned as scheduled property existed and that there was no structure. Therefore, permitting to reopen the evidence of the plaintiffs and recalling PW-1 for the purposes like house numbers etc. was not to serve any purpose. The interim application under Order XVIII Rule 17, CPC were apparently filed as a delaying tactics and was destined to be a futile exercise.

7.2 In any case and in any view, it was not permissible in law for the court to exercise the powers under Order XVIII Rule 17, CPC permitting the plaintiffs to recall their witnesses and reopen the evidence. The directions passed by the High Court per se did not fell within the purview and parameters of exercisable powers under Order XVIII Rule 17, CPC.

7.3 The direction in 'b' passed in the impugned order by the High Court is to complete the cross-examination of PW-1 within stipulated time. Indeed, this direction is completely beyond the scope of Order XVIII Rule 17, CPC. The Bombay High Court in Balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhakta and Others11, was more specific in making a statement of law in paragraph 5 of the judgment to observe that Order XVIII Rule 17, CPC does not permit a party to cross-examine a witness. The position is akin to one obtained in the facts of the case. 7.3.1 This Court endorses to the following observations made by the Bombay High Court in that regard in Balkrishna Shivappa Shetty (supra), "...The said provision of law apparently does not deal with the subject of allowing the parties to cross-examine the witness after such witness being recalled in exercise of powers thereunder. In other words, the provisions contained in Order 18, Rule 17 of the Code do not empower the Court to recall the witness for the purpose of cross-examination by either of the parties though it does permit recall of witnesses for the purpose of examination by the Court itself..." (Para 5) 11 AIR 2003 Bom 293 7.4 It became evident that the plaintiffs, by filing interim applications under Order XVIII Rule 17, CPC for recalling witnesses and seeking to produce documents under Order VII Rule 14, CPC read with Section 151, CPC, admitted, and wanted to, fill up the gaps in the evidence which was already led and closed, utilising the provision for curing the lacunae, which was not permissible. 7.5 The frontline reasoning which pervaded the orders passed by the Trial Court allowing three interim applications was that no prejudice would be caused to any party if the plaintiffs were permitted to recall the witnesses and the evidence is reopened. This premise, as stated above, could not have been the ground to invoke the provision of Order XVIII Rule 17, CPC. The theory of "no prejudice" cannot be conveniently applied to justify invocation of the provision of Order XVIII Rule 17, CPC.

8. While the orders passed by the Trial Court and modified by the High Court, in their directions are mainly referable to the exercise of powers under Order XVIII Rule 17, CPC, the prayer seeking to receive the documents was under Order VII Rule 14, CPC. This prayer was inextricably interwoven with the prayers under Order XVIII Rule 17, CPC. The directions in their totality, thus suffer from vices of illegality as above.

9. In view of the discussion above and the reasons supplied, the impugned order of the High Court and the directions issued therein are not sustainable in law.

10. Resultantly, the impugned common order dated 15.09.2023 passed by the High Court for the State of Telangana at Hyderabad in Civil Revision Petition Nos.458 of 2023, 496 of 2023 and 621 of 2023, is hereby set aside. The appeals are allowed.

The interlocutory applications, if any, shall not survive in view of the disposal of the appeals as above.

.....,J.

[S.V.N. BHATTI] .....,J.

[N.V. ANJARIA] NEW DELHI;

August 04, 2026.