

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

CIVIL REVISION PETITION Nos.515 and 1063 of 2014

COMMON ORDER:

Since these two Civil Revision Petitions arise out of the same suit and as the issues are also interrelated, this Court deems it appropriate and apposite to dispose of these Civil Revision Petitions by way of a common order.

Defendant No.1 in O.S.No.27 of 2012 on the file of the Court of the Senior Civil Judge, Siricilla, Karimnagar District is the petitioner in C.R.P.No.515 of 2014 and the plaintiff in the said suit is the petitioner in C.R.P.No.1063 of 2014.

C.R.P.No.515 of 2014 assails the order, dated 24-01-2014 passed by the said Court, dismissing I.A.No.892 of 2013 filed by the petitioner (defendant No.1) under the provisions of Order 8 Rule 9 of Code of Civil Procedure (for short, 'the C.P.C.'), seeking permission of the Court to file additional written statement.

C.R.P.No.1063 of 2014 filed by the plaintiff in the suit challenges the order, dated 24-01-2014 passed by the said Court, allowing the I.A.No.891 of 2013 filed by the first respondent/ first defendant under provisions of Order 8 Rule 1 A (3) of the C.P.C., seeking permission of the Court to file documents namely original registered gift settlement deed bearing document No.457 of 2011 and original registered gift settlement deed bearing document

No.458 of 2011.

Heard Sri E. Venugopal Reddy, learned counsel for the petitioner in C.R.P.No.515 of 2014 and first respondent in C.R.P.No.1063 of 2014 and Sri N. Janardhan Reddy, learned counsel for the petitioner in C.R.P.No.1063 of 2014 and the first respondent in C.R.P.No.515 of 2014, apart from perusing the material available before this Court.

The facts and circumstances leading to filing of the present these two revisions are as under:

The first respondent in C.R.P.No.515 of 2014 is the petitioner in C.R.P.No.1063 of 2014 instituted the suit in O.S.No.27 of 2012 before the Court of the Senior Civil Judge, Siricilla, seeking partition of the suit schedule properties. In the said suit defendant No.1 filed a written statement. In the said suit the first defendant/petitioner in C.R.P.No.515 of 2014 and the first respondent in C.R.P.No.1063 of 2014 filed two Interlocutory Applications i.e., I.A.Ns.891 and 892 of 2013 respectively under the provisions of Order 8 Rule 9 of the C.P.C. and Order 8 Rule 1 A (3) of the C.P.C. The learned Senior Civil Judge, Siricilla by way of orders, dated 24-01-2014 allowed I.A.No.891 of 2013 and dismissed I.A.No.892 of 2013.

Calling in question the validity and the legal acceptability of the said orders passed by the learned Senior Civil Judge, Siricilla the present revisions have been filed by the parties aggrieved.

It is contended by the learned counsel for the petitioner (defendant No.1) in C.R.P.No.515 of 2014 and the first respondent in C.R.P.No.1063 of 2014 that the order impugned in C.R.P.No.515 of 2014 is erroneous, contrary to law and opposed to the very spirit and object of the provision of Order 8 Rule 1 A (3) and Rule 8 Order 9 of C.P.C. It is further contended by the learned counsel that since the subject matter of the suit is partition, the Court below ought to have adopted a liberal approach and ought to have allowed I.A.No.892 of 2013 and ought not to have dismissed the application. It is further contended by the learned counsel that there is absolutely no justification on the part of the Court below in dismissing I.A.No.892 of 2013.

On the contrary, it is vehemently argued by the learned counsel for the petitioner in C.R.P.No.1063 of 2014 and the first respondent in C.R.P.No.515 of 2014 that the learned Senior Civil Judge went wrong in allowing I.A.No.891 of 2013 having dismissed I.A.No.892 of 2013. It is further submitted by the learned counsel that since the first defendant in the suit failed to satisfy the necessary ingredients of Order 8 Rule 1 A (3) of the C.P.C and Order 8 Rule 9 of the C.P.C., the first defendant is not entitled for any relief. It is further submitted that there is no illegality nor any material infirmity in the order passed by the Court below in I.A.No.892 of 2013 as such C.R.P.No.515 of 2014 deserves to be dismissed.

In the above background now the issues that emerge for consideration of this Court are:

1. *Whether the orders passed by the learned Senior Civil Judge are in accordance with the provisions of Order 8 Rule 9 of the C.P.C. and Order 8 Rule 1 A (3) of the C.P.C?*
2. *Whether the orders under challenge warrant any correction by this Court under Article 227 of the Constitution of India?*

The information made available before this Court vividly and candidly discloses that the first respondent in C.R.P.No.515 of 2014 instituted O.S.No.27 of 2012, seeking following relieves:

- i. *To pass a preliminary decree for partition and separate possession of suit schedule property "A", to "I" by meets and bounds.*
- ii. *To grant relief of mense profits of Rs.2,00,000/- (Rupees Two lakhs only) per year from the year 1991 till the date of realization for the suit schedule properties and also future mense profits.*
- iii. *Cost of the suit may be awarded.*
- iv. *Any other relief or reliefs that this Hon'ble Court deems fit and proper may also be awarded.*

The first defendant/petitioner in C.R.P.No.515 of 2014 filed written statement resisting the suit. The first defendant/ petitioner in C.R.P.No.515 of 2014 filed two Interlocutory Applications i.e., I.A.No.891 of 2013 under provisions of Order 8 Rule 1 A (3) of the C.P.C., requesting the Court below to receive the documents namely original registered gift settlement deed bearing document No.457 of 2011 and another original registered gift settlement deed bearing document No.458 of 2011 registered on the file of Sub-Registrar, Vemulawada under the original pattedar passbook pertaining to late Adi Reddy and I.A.No.892 of 2013 under the provisions of Order 8 Rule 9 of Code of Civil Procedure (for short,

'the C.P.C.'), to permit the first defendant to file additional written statement.

In the affidavits filed in support of the Interlocutory Applications the first defendant stated that the documents proposed to be filed could not be traced out till recently. In the said affidavits the first defendant also stated that as per the oral partition took place in July, 1989 his father by name Adi Reddy was allotted and given the agricultural land bearing Sy.No.93 admeasuring Ac.3-17 gts., situated at Hanmajipet Village, Vemulawada Mandal and at the time of the said oral partition the respondent/plaintiff and the second defendant agreed to give the above said allotted land to the said Adi Reddy, after his demise to him. The first defendant also stated in the said affidavit that after his father's death on 10-05-2009 plaintiff and the second defendant gave the above said land of Adi Reddy to him and in the year 2011 plaintiff and himself adjusted the allotted land in oral partition in the year 1989 and as per the said adjustment, he gifted the land bearing Sy.No.25/AA total admeasuring Ac.1-03 gts., and Sy.No.30 admeasuring Ac.2-04 gts., to the plaintiff by way of registered gift settlement deed bearing document Nos.457 and 458 of 2011, dated 25-01-2011. Seeking permission of the Court to place the said facts by way of additional written statement the petitioner in C.R.P.No.515 of 2014 filed I.A.No.891 of 2013 and I.A.No.892 of 2013.

The plaintiff resisted the said applications by way of filing counter. It is significant to note that in the said counter at

paragraph No.4 the plaintiff stated as follows:

“In the light of the above clarification the other averments of para 2 has no bearing at all and similarly the other registered gift deed document No.458/2011 is executed by me in favour of defendant No.1 in respect of Sy.No.27, to the extent of 0.27 gts and why I have not mentioned in my plaint is due to the fact already there was an understanding between me, defendant No.1 and Defendant No.2 & 3 that these gift deeds should never be acted upon. But I am not aware as to when the Petitioner/Defendant No.1 has cancelled the Defendant No.457/2011 and I obtained it on 10.12.2013 and I am filing the document to this effect. Therefore the petition is devoid of merits and fit to be dismissed.”

The learned Senior Civil Judge dismissed I.A.No.892 of 2013 wherein the petitioner in C.R.P.No.515 of 2014 sought permission of this Court to file additional written statement and allowed I.A.No.891 of 2013 wherein the petitioner sought permission of the Court to file documents.

The learned Judge for the purpose of dismissing the application in I.A.No.892 of 2013 relied upon the judgment of this Court in case of **SHAIK ASHA AND ANOTHER V. SHAIK MOULAALI AND OTHERS**^[1]. In the said judgment this Court refused to entertain application filed under Order 8 Rule 9 of the C.P.C. on the ground that there was inconsistency in the pleadings. In the instant case it is not even the case of the plaintiff that there is inconsistency in the pleadings. Therefore, the learned Judge is not right in applying the principle laid down in the said judgment.

In fact, the learned counsel for the first defendant relied upon the judgment of this Court in case of ***P. HAJIRAM BI AND OTHERS V. M. ISMAIL KHAN AND OTHERS***^[2], wherein this Court held that the discretion of the Court to allow subsequent pleadings under Order 8 Rule 9 of the C.P.C. is wider than the discretion given to the Court under Order 6 Rule 17 of the C.P.C.

In the instant case having allowed I.A.No.891 of 2013 filed by the first defendant, there is absolutely no justification on the part of the Court below to dismiss I.A.No.892 of 2013. Since it is a suit for partition and as substantial rights of the parties are involved in the matter this Court deems it appropriate to permit the first defendant to file additional written statement as requested in I.A.No.892 of 2013.

This Court is also of the opinion that the order passed by the Court below in I.A.No.891 of 2013 does not call for any interference by this Court in view of the findings of this Court in the preceding paragraphs.

For the aforesaid reasons, C.R.P.No.515 of 2014 is allowed, setting aside order, dated 24-01-2014 passed in I.A.No.892 of 2013 and consequently I.A.No.892 of 2013 is allowed.

C.R.P.No.1063 of 2014 is dismissed, confirming the order passed by the Court below in I.A.No.891 of 2013. It is also made clear that the parties are entitled to adduce further evidence also.

The Court below shall dispose of the suit as expeditiously as possible. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in these Civil Revision Petitions shall stand closed.

A.V. SESA SAI, J

February 12, 2015

PN

THE HON’BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITIONS No.515 and 1063 of 2014

-

February 12, 2015

-

-

PN

[\[1\]](#) 2005 (5) ALD 780

[\[2\]](#) 2012 (3) ALD 669