

HON'BLE SRI JUSTICE S. RAVI KUMAR

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C.R.P.Nos.5139 & 4118 of 2014

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COMMON ORDER:

These two revisions are filed against orders dated 08.10.2014 in I.A.Nos.1129 of 2013 & 1130 of 2013 in O.S.No.8 of 2007. I.A.No.1129 of 2013 is filed under Order XVIII Rule 17 CPC to recall petitioner for the purpose of marking documents and I.A.No.1130 of 2013 is filed under Order VIII Rule 14 CPC to receive the documents.

2. Trial Judge after considering the contentions and rival contentions of both parties, dismissed those applications holding that the reasons assigned in the affidavit filed in support of applications are not convincing and that petitioner filed those applications only to drag on the matter and that the applications are devoid of merits. Aggrieved by the dismissal of those two applications, these two revisions are preferred.

3. Advocate for revision petitioner submitted that the documents sought to be marked are important documents to prove the defence of revision petitioner, particularly, Pahani Patrika for the years 1995-1996, but lower Court without giving opportunity to petitioner dismissed both the petitions. He submitted that now the suit is at the stage of further evidence of defendants, therefore, no prejudice will be caused to other side, even if, some opportunity is given to petitioner to bring these documents on record and requested that opportunity may be given to revision petitioner to prove his case.

4. This Court ordered notice to first respondent/ plaintiff and permitted petitioner to take out personal notice also through advocate on record in the lower Court, and in compliance of the said order, revision petitioner issued notice to counsel for first respondent/plaintiff on record in the lower Court through Registered Post with acknowledgment due and filed proof of service stating that said notice was served to advocate on 09.04.2015. Postal receipt and postal acknowledgments are filed in compliance of the said order. The

other respondents according to endorsement in the revision, are not necessary parties.

5 . I have perused the material papers and impugned order dated 08.10.2014. Trial Court mainly considered the application filed under Order VIII Rule 14 CPC to receive the documents and as the said application is dismissed, the other application I.A.No.1129 of 2013 for recalling of witness is dismissed as a consequential to the dismissal of I.A.No.1130 of 2013. According to revision petitioner, after completion of his evidence, he obtained certified copies from the concerned authorities, and as such, there was a delay in producing the documents, and for that reason, he sought permission of the Court to receive them.

6. As seen from the material, evidence of revision petitioner herein is completed on 17.04.2013 and thereafter five witnesses are examined on his behalf and this application was filed on 12.12.2013. Learned trial judge noticed that one document, which is deposition of a witness in O.S.No.36 of 2004 was obtained by petitioner on 03.04.2012, and Pahani Patrika for the years 1995-1996 was obtained on 03.09.2012, and these two documents were very much available with petitioner by the time of his examination as a witness. On this ground, the trial Court dismissed application, as the reasons mentioned in the affidavit explaining delay are contrary to the factual position.

7. I have verified the copy of affidavit filed in support of both petitions i.e., I.A.Nos.1129 of 2013 and 1130 of 2013. The same affidavit is filed in both applications and it is specifically averred in the affidavit that these documents were obtained after completion of evidence, which is factually incorrect. Therefore, I do not find any illegality or irregularity committed by the trial Court in considering the applications to recall the witness and to receive the documents.

8. On a scrutiny of the material, I am of the view that the trial Court is perfectly justified in refusing the request of revision petitioner both for receiving documents and recalling of witness.

9. For these reasons, these two Civil Revision Petitions are devoid of merits and dismissed accordingly. No costs.

As a sequel, miscellaneous petitions, if any filed in these civil revision petitions, shall stand closed.

S. RAVI KUMAR, J

Date: 21-04-2015

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