

HONOURABLE SRI JUSTICE G. CHANDRAIAH

CIVIL REVISION PETITION No. 4128 OF 2014.

DATED 24TH APRIL, 2015.

BETWEEN

Pandrangi Srini and ors.

...Petitioners

And

Smt. Dasamantha Rao Parvathi and ors

...Respondents.

HONOURABLE SRI JUSTICE G. CHANDRAIAH

CIVIL REVISION PETITION No. 4128 OF 2014.

ORDER:

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Defendants in O.S.No.201 of 2005 on the file of the Court of learned Senior Civil Judge, Gajuwaka, Vishakapatnam District have filed this Civil Revision Petition aggrieved by the order dated 10.09.2014 whereby the interlocutory application I.A.No.764 of 2014 filed by the petitioners herein under Section 151 CPC seeking to reopen the suit was dismissed.

The respondents/plaintiffs filed the aforesaid suit seeking permanent injunction. After conclusion of the evidence by both sides and when the suit was coming up for arguments, the petitioners/defendants filed I.A.No.764 of 2014 seeking to reopen the suit to receive the petition filed under Order XI Rule 15 CPC directing the plaintiffs/respondents herein to produce the original documents, namely, the original sale deed dated 10.05.1963 said to have been executed by the father of the first defendant/first petitioner herein for an extent of 0.76 cents in Sy.No.94/3 and also the original sale deed dated 02.07.1963 said to have been executed by the second defendant/second petitioner herein for an extent of Ac.1.75 cents in Sy.No.94/6, both in favour of Maravathu Seshagiri Rao, before the Court for inspection of the revision petitioners/defendants. On hearing both sides and perusing the material on record, the Court below dismissed the aforesaid interlocutory application through the order under revision dated 10.09.2014 on the ground that the document sought to be produced are not within the control or possession of the respondents/plaintiffs and that the present petition filed at the belated stage is only to prolong the suit on one pretext or the other. Hence the present revision petition.

The learned Counsel for the petitioner vehemently submits that the original link documents are very much crucial and essential for deciding the lis in the suit inasmuch as the existence of such documents itself is in dispute. The learned Counsel further submits that having the respondents/plaintiffs filed the suit mainly relying on the documents sought to be produced, but, in absence of production of the same, they cannot seek relief against the petitioners/defendants. The learned Counsel also submits that the documents sought to be produced are very much in possession of the respondents/plaintiffs or their vendors inasmuch as the suit itself was instituted based on the said documents and therefore the production of such documents cannot be said to be impossible.

Perused the material available on record.

A reading of the Order 11 Rule 15 CPC makes it clear that when a reference is

made to any document in the pleadings or affidavit by one party, the other party to that suit is entitled to, on or before settlement of issues to give notice to that party who mentioned about the document in his pleadings, to produce such document. There is no dispute with the provisions of Order 11 Rule 15 CPC or the extent of its applicability to the proceedings under the Act. The said rule is a complete Code with regard to the right of a party to ask for production of documents and the duty cast on the other side to produce the same as well as the consequences which may be visited on a party who has wrongly omitted to produce documents referred to in the said rule.

In the case on hand, the petitioners/defendants have got issued requisite notice on 18.10.2005 to the respondents/plaintiffs for production of the documents in question, i.e. before the settlement of issues, which is on 11.06.2008. However, the respondents/plaintiffs failed to produce the same. Having known that the respondents/plaintiffs are not coming forward to produce the documents in question in compliance with the said notice, it is not known what prevented the petitioners/defendants to file appropriate application at an appropriate stage, without waiting till 01.09.2014, i.e., the date on which the impugned application is filed. It is not in dispute that the impugned applications are came to be filed after closure of evidence of petitioners/defendants on 06.08.2013. Indubitably, filing of the present interlocutory applications at this belated stage is nothing but abuse of process of Court. For some reason or the other, there appears to be some amount of negligence and carelessness on the part of the petitioners/defendants in pursuing the same.

A bare perusal of the order under revision reveals that at the instance of the petitioners/defendants, the suit was reopened on 6.8.2013, 5.3.2014, 17.4.2014 and on 24.6.2014 for cross examination of DWs 2 to 5 and ultimately the defendants evidence was closed on 14.8.2014. Though the petitioners/defendants have invoked the provisions of CPC for reopening the suit as many as four times, but they could not come up with the impugned application at initial stage of the suit itself and thus could not prosecute the application in its right perspective though they can take recourse of these proceedings with the aforesaid proceedings simultaneously.

Furthermore as per Order 11 Rule 15 of CPC the direction for production of documents for inspection has to be in terms of the prescribed Form No. 6 in Appendix-C, and a perusal of the format thereof indicates that the said direction for production is to be passed after reading the affidavit which has been filed. From a perusal of the order under revision, it is evident that the petitioners/defendants have not stated anything in the petition as to why they could not come up with such a petition at an early date. Except stating that the link documents are very crucial, they have not stated as to how they are relevant for deciding the issues in the suit. On the other hand, the fact remains that certified copy of the link document dated 10.5.1963 was marked as Ex.A.12 and in so far as the second link document dated 2.7.1963 is concerned, the Registrar gave a letter stating that the said document is damaged. The said letter and EC with regard to the property in link document dated 2.7.1963 were marked as Exs.A.34 and A.35.

Furthermore, it is on record that the witnesses for the respondents/plaintiffs have stated during their cross-examination that it is not possible to obtain the original link documents since it is not known in whose possession of the plot owners the said documents are. In view thereof, the respondents/plaintiffs have stated that the original documents sought to be produced are not within their power or control or access. If that be so, the trial Court cannot compel them to produce the documents in question unless and otherwise it is specifically proved by the petitioners/defendants. In view of the above, I do not see any illegality or irregularity in the order under revision warranting interference with the same.

For the foregoing discussion, the contentions of the learned Counsel for the petitioners merits no consideration and thereby the Civil Revision Petition is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE G. CHANDRAIAH

DATED 24TH APRIL, 2015.

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