

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5535 of 2010

ORDER :

This Revision is filed challenging the order dt.27.09.2010 in I.A.No.292 of 2010 in O.S.No.788 of 2003 on the file of IV Additional Senior Civil Judge (F.T.C.), Visakhapatnam.

2. The petitioners herein are defendants in the suit.

3. The respondent/plaintiff filed the suit for declaration of his title to plaint schedule property and for recovery of possession thereof in the year 2003. He subsequently filed I.A.No.292 of 2010 on 04.08.2010 under Order 16 Rule 1 C.P.C. to issue summons to witnesses whose names were referred to in the said petition, and to examine them as court witnesses in respect of documents already marked as Exs.B.1 to B.4 and B.6 to B.11.

4. This application was opposed by petitioners.

5. By order dt.27.09.2010, the Court below dismissed the said I.A., but while doing so, purporting to act in the interests of justice and in exercise of its inherent powers, it recalled PW.1 for the limited purpose of marking certain documents which were filed along with I.A.No.292

of 2010.

6. Challenging this portion of the order, the petitioners filed the Revision.

7. The counsel for petitioners contended that while dismissing I.A.No.292 of 2010, the Court below had no jurisdiction to recall PW.1 for marking documents filed along with the said I.A.; this procedure is contrary to Order 7 Rule 14 (3) C.P.C.; no opportunity had been given to petitioners to oppose the marking of documents mentioned by court; and that the said order cannot be sustained.

8. On the other hand, the counsel for respondent contended that the Court below is entitled in the interests of justice under inherent powers of the Court to re-call PW.1 for the limited purpose of marking documents filed along with I.A.No.292 of 2010.

9. Order 7 Rule 14 Clauses 1 and 3 state :

“R.14. Production of document on which plaintiff sues or relies : --

(1) Where a plaintiff sues upon a document in his possession or power in support of this claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

... ..

(3) A document which ought to be produced in Court

by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

... ..”

10. A reading of the above provision indicates that the plaintiff, who sues upon a document or relies upon a document, shall produce the same at the time of filing his plaint and if he does not do so, unless he seeks leave of the Court, he cannot file it later.

11. In the present case, no application has been filed by respondent/plaintiff seeking leave to file the documents mentioned by him in I.A.No.292 of 2010, and the reason why he could not file them along with the plaint. Therefore, the Court below could not have permitted recall of PW.1 for marking the documents filed along with I.A.No.292 of 2010 *suo moto*. This is contrary to Order 7 Rule 14 (3) C.P.C., and also contrary to the principles of natural justice, because the petitioners are entitled to oppose grant of leave to respondent to mark the said documents seven years after filing of the suit.

12. Accordingly, the Revision is allowed. No order as to costs.

13. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-06-2015

Ndr/*