

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C. R. P. Nos. 125 and 126 of 2015

COMMON ORDER:

Since these two Revisions arise between the same parties in the same suit, they are being disposed of by this common order.

2. The petitioner herein is the defendant in the above suit. The respondents/plaintiffs filed the suit for eviction of the petitioner, for recovery of arrears of rent and for mesne profits. Trial commenced and concluded and the matter was posted for final arguments.

3. At that stage, the respondents/petitioners filed I.A.No.472 of 2014 under Section 151 CPC to reopen the suit for marking of original acknowledgement of receipt dt.29.09.2007 allegedly issued by the petitioner and a GPA executed by the 2nd respondent. They also filed I.A.No.473 of 2014 under Order 18 Rule 17 CPC to recall PW2 for marking of the said documents.

4. These applications were opposed by the petitioner, but they were allowed by the Court below. It however directed recall of PW1 instead of PW2.

5. Challenging the same, these two Revisions are filed.

6. Heard Sri Namavarapu Rajeshwar Rao, Counsel for the petitioner and Sri V.Hari Haran, Counsel for the respondents.

7. Counsel for the petitioner contended that when the application filed by the respondent/plaintiff was to recall PW2, the Court below could not have recalled PW1 in the impugned order.

8. The contention of the petitioner appears to be correct. In the affidavit filed along with I.A.No.472 of 2014, the respondents have specifically sought for recall of PW2 for marking of these documents. Therefore, the Court has to decide whether PW2 can be recalled or not. It cannot say that in the place of PW2, PW1 should be recalled, when there is no such request by the respondents.

9. Also it is not disputed that application for grant of leave under Order 7 Rule 14 (3) CPC has not been filed by the petitioners for filing these documents. Admittedly, these documents were not filed along with the plaint. Therefore, unless the respondents file an application under Order 7 Rule 14(3) CPC and seek leave of the Court to file them, it is not open to the Court below to receive them in evidence.

10. Therefore, CRP.No.125 of 2015 is allowed setting aside the order dt.19.12.2014 in I.A.No.472 of 2014 of the II Senior Civil Judge, City Civil Court, Hyderabad and the I.A.No.472 of 2014 is dismissed. Consequently, CRP.No.126 of 2015 is allowed and I.A.No.473 of 2014 is dismissed. There shall be no order as to costs.

11. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

14th July, 2015.

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