

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.3676 and 3742 of 2013

COMMON ORDER :

Since the parties to these Revisions are one and the same and both these Revisions arise out of the same suit, these Revisions are being disposed of by this common order.

2. The petitioner in both these Revisions is the plaintiff in the above suit.

3. He filed the suit against respondents seeking a perpetual injunction restraining the respondents from interfering with his possession and enjoyment of the plaint schedule property.

4. Written statement was filed by respondents opposing the suit claim.

5. In the written statement, reference is made by respondents to original agreement of sale and an original receipt, both dt.29.06.2002, allegedly executed by petitioner in favour of the father of 1st defendant. They contended that under the said documents vacant possession of the land was delivered to respondents. But along with the written statement these two documents were not filed although they were mentioned in the list of documents as if they were filed along with the written

statement. The written statement was filed on 27.07.2004.

6. Thereafter, issues were framed. Trial commenced. Evidence on the side of plaintiff was concluded.

7. Thereafter, an application was filed under Order 8 Rule 14 C.P.C. to receive these two documents on 20.06.2013 and that application appears to have been allowed. During the evidence of respondents/defendants, these two documents were filed as Exs.B.2 and B.3. The defence' evidence was subsequently closed. The case was posted for arguments.

8. At that stage, the petitioner filed I.A.No.352 of 2013 to re-open the suit for the purpose of leading evidence against Exs.B.2 and B.3 and also I.A.No.353 of 2013, under Order 18 Rule 17A to lead further evidence on his behalf in respect of Exs.B.2 and B.3.

9. In these applications, the petitioner contended that these two documents Exs.B.2 and B.3 had been filed recently by respondents and they were not filed before commencing the evidence or at the time of the petitioner's evidence; so the petitioner did not have an opportunity to lead evidence on these documents; that he had evidence to prove that these two documents were false documents; he could not examine witnesses in respect of these

documents when he was leading evidence because they had not been filed by respondents by then; and therefore, he may be permitted to lead evidence in respect of these two documents and for that purpose, the Court below may re-open the suit.

10. Counter-affidavit was filed by respondents opposing these applications and contending that O.S.No.257 of 2006 was filed against petitioner before the Senior Civil Judge, Vikarabad by them in which these two documents were marked and so, the petitioner had knowledge about them. They contended that these two documents had already been referred to in the written statement filed by respondents; and therefore, there was no necessity to re-open the suit and permit the petitioner to lead evidence on these two documents.

11. By order dt.15.07.2013, the Court below dismissed I.A.No.352 of 2013 and consequently I.A.No.353 of 2013. It held that the petitioner had knowledge about these documents in O.S.No.257 of 2006 filed for specific performance of the agreement of sale Ex.B.3 and these documents had been mentioned in the written statement in present suit, and therefore, there were no satisfactory grounds to allow these applications.

12. Challenging the same, the present Revisions are filed.

13. Heard the counsel for petitioner Sri N. Prashant, and Sri N. Vasudeva Reddy, counsel for respondents.

14. The counsel for petitioner contended that these two documents had not been filed along with written statement by respondents, even though they had been referred to in the written statement; therefore, the petitioner was entitled to proceed on the assumption that they would not be filed at a later point of time and did not lead any evidence with regard to these documents when his turn to lead evidence came; but when these documents were filed in the year 2013 after grant of leave by the Court to file these documents to respondents/defendants, the petitioner is entitled to an opportunity to lead evidence regarding these documents and to establish that they are not true, valid and binding on petitioner. He contended that merely because the petitioner had knowledge of these documents in O.S.No.257 of 2006, petitioner cannot be deprived of an opportunity in the present suit to lead evidence about these two documents and the Court below acted perversely in denying him an opportunity to lead evidence on these two documents.

15. The counsel for respondents, on the other hand, refuted these contentions. He contended that these two documents are not new to the petitioner and therefore the petitioner should have taken care to lead evidence to

attack these documents when he had the opportunity to lead evidence, and at the stage when the case was posted for arguments, the petitioner cannot seek to lead evidence with regard to these documents by re-opening his evidence.

16. I have noted the submissions of both sides.

17. The suit had been filed seeking a perpetual injunction by the petitioner against the father of respondents. He died pending suit and the respondents, his legal representatives, were brought on record. In the written statement filed by the deceased 1st defendant/1st respondent although these documents had been referred to, admittedly they were not filed along with it. Therefore, in my considered opinion, the petitioner was entitled to proceed on the assumption that they would not be filed in the suit by the respondents and proceed to lead evidence on that basis. However, the Court below allowed the respondents to mark these two documents on 20.06.2013 during the evidence of DW.1 after the respondents had filed an application to permit them to file these documents and the said application was allowed. Once the documents have been marked in the evidence of DW.1, the petitioners cannot be deprived of an opportunity to lead evidence as to the truth, valid and binding nature of these documents on the specious plea that petitioners were aware of these two documents since they were

parties in O.S.No.257 of 2006 where they had been filed. This irrelevant factor was unfortunately taken note of by the Court below as a ground for rejecting these two applications filed by petitioner.

18. Rules of procedure, it is settled law, are all hand-maids of justice. No party can be allowed to take the other party by surprise by producing documents in support of their case at a late stage and then oppose the request of the other party to have an opportunity to lead rebuttal evidence on the documents produced by them belatedly in their evidence.

19. In my considered opinion, the Court below had erred in depriving the petitioner of an opportunity to lead evidence with regard to Exs.B.2 and B.3 which were admittedly filed by respondents ten years after the suit was filed by petitioner/plaintiff. Therefore, the orders dt.15.07.2013 in I.A.No.352 of 2013 and I.A.No.353 of 2013 are both set aside and both I.A.s are allowed and the Revisions are allowed accordingly. No order as to costs.

20. Since the suit is of the year 2003, the Court below shall expeditiously dispose of the suit preferably within a period of six (06) months from the date of receipt of a copy of this order.

21. Miscellaneous applications, pending if any in

these Revisions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-06-2015

Ndr/*