

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CIVIL REVISION PETITION Nos.2804 and 2811 of 2015

Between:

G.Raghunandan and 8 others
... Petitioners.

And

E.Amsamma and 9 others.
... Respondents.

DATE OF JUDGMENT PRONOUNCED:18.08.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals | No |
| 3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | No |

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION Nos.2804 and 2811 of 2015

COMMON ORDER:

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Both these revisions can be disposed of by this common order for, they arise out of the same suit O.S.No.945 of 19989 on the file of the Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar. The petitioners in both these revisions are the defendants in the suit.

One Sri K.Mohan Reddy instituted suit O.S.No.945 of 1998 seeking perpetual injunction to restrain the defendants in the suit from interfering with his possession with regard to the land of an extent of Ac.12.20 gts., situated in Survey No.57/A, Karmanghat Village, Saroornagar Mandal, Ranga Reddy District. Along with the suit an interlocutory application I.A.No.3150 of 1998 has also been taken out for grant of temporary injunction and based upon the *ex parte* interim injunction order, it is alleged by the petitioners herein, that interference with their possession of the land of total extent of Ac.19.00 gts., is caused. One Sri E.Narasimha Reddy filed a similar suit O.S.No.937 of 1998 for perpetual injunction before the same Court with regard to the land of an extent of Ac.6.28 gts., situated in the same Survey No.57/A, Karmanghat Village, Saroornagar Mandal. In that suit O.S.No.937 of 1998 also I.A.No.3108 of 1998 was moved and based upon the *ex parte* interim injunction order Sri E.Narasimha Reddy, it is alleged, started interference with the possession of the land of the petitioners. In those circumstances, the petitioners herein instituted O.S.No.987 of 1998 seeking injunction

against both these plaintiffs in the aforementioned O.S.No.937 of 1998 and 945 of 1998. I.A.No.3325 of 1998 was moved seeking *ad interim* injunction in this suit. The Court, therefore, heard all the 3 I.As in all the 3 suits and modified the *exparte* interim injunction orders passed earlier to that of *status quo* orders in all the 3 suits referred to supra. Matters were carried in appeal to the District Court and therefrom Civil Revision Petitions were preferred to this Court.

This Court remanded the matter back to the trial Court for consideration afresh. Thereafter, the trial Court allowed I.A.No.3325 of 1998 in O.S.No.987 of 1998 filed by the petitioners herein and granted interim injunction, correspondingly 2 I.As moved in O.S.Nos.937 of 1998 and 945 of 1998 were dismissed, by an order passed on 05.06.2000. The interim injunction order passed in I.A.No.3325 of 1998 in O.S.No.987 of 1998 is subsisting and attained finality.

In the meantime, suit O.S.No.937 of 1998 filed by Sri E.Narasimha Reddy has been withdrawn with liberty to file a comprehensive suit. Thereafter, suit O.S.No.616 of 2003 was filed and even that suit was also dismissed as not pressed and withdrawn in the year 2011. Thus, the resistance offered by Sri E.Narasimha Reddy and that branch with regard to the land of an extent of Ac.6.28 gts., has virtually abated. The plaintiffs in O.S.No.945 of 1998 filed another suit O.S.No.9 of 2000 before the District Court, seeking declaration of their title and possession with regard to the land of an extent of Ac.12.20 gts., situated in Survey No.57/A, Karmanghat Village, Saroornagar Mandal. Alternatively, they also prayed for recovery of possession from the defendants in that O.S.No.9 of 2000. An Interlocutory Application was moved in O.S.No.9 of 2000 for withdrawal of that suit with liberty to file fresh suit. That I.A. was opposed and contested by the petitioners herein and hence the District Court dismissed that I.A. Thereafter, a memo was filed that suit O.S.No.9 of 2000 is not pressed. On that memo of the parties, the District Court

passed orders on 21.04.2011 dismissing O.S.No.9 of 2000 imposing costs of Rs.2,000/-.

By virtue of the order passed by this Court in C.R.P.No.1390 of 2013 dated 04.06.2013 both the civil suits, O.S.Nos.945 of 1998 and 987 of 1998 are ordered be clubbed together and to be tried together. Thus, trial in O.S.No.945 of 1998 together with O.S.No.987 of 1998 has commenced. P.Ws.1 to 3 were examined on behalf of the plaintiffs in O.S.No.945 of 1998. On behalf of the petitioners herein who are the defendants in O.S.No.945 of 1998 D.Ws.1 and 2 were examined. The respondent Nos.1 to 3 herein who are legal heirs representing the branch of Sri E.Narasimha Reddy, being the widow and sons of the said Sri E.Narasimha Reddy did not choose to cross-examine the P.Ws.1 to 3. The plaintiffs in O.S.No.945 of 1998 filed a memo before the trial Court calling upon respondent Nos.1 to 3 – wife and 2 sons of Sri E.Narasimha Reddy, to tender evidence as they are sailing with the plaintiffs in O.S.No.945 of 1998, so that the evidence on their behalf can come on record first before the petitioners herein, who are the defendants in O.S.No.945 of 1998 tender their side of the evidence. The trial Court passed an order on 09.06.2014 directing the respondent Nos.1 to 3 herein – Sri E.Narasimha Reddy's branch to lead evidence, but however they did not choose to do so, and hence their side of the evidence was closed. After D.Ws.1 and 2 are examined, once again the trial Court permitted the respondent Nos.1 to 3 to lead their evidence on the ground that there was some discrepancy with regard to the earlier memo filed by the plaintiffs in O.S.No.945 of 1998. Now, along with the affidavit in lieu of chief examination, D.W.3 filed certain documents and sought permission of the Court to receive the same. When the matter was adjourned to 03.06.2015 for counter, then again another interlocutory application was moved on 08.06.2015 seeking permission to file certain

other documents. That was opposed. It was contended that the documents sought to be filed are intended to fill-up the gaps in the evidence of the plaintiffs in O.S.No.945 of 1998 and it is impermissible to do so. Since the said interlocutory applications are allowed directing D.W.3 to file certain documents, the present revisions are preferred.

Heard Sri D.Madhava Rao, learned counsel for the petitioners and Sri Vijaysen Reddy, learned counsel for the opposite parties/plaintiffs in the suit.

It is sought to be urged before me by Sri Vijaysen Reddy, learned counsel that the documents that are sought to be filed are all public documents and that the documents have in fact been made available to the learned counsel, who inadvertently failed to file them before the Court and further the Court has allowed these documents now to be brought on record by marking them and by doing so, no prejudice is caused to the case of the petitioners herein.

Per contra Sri D.Madhava Rao, learned counsel, would urge that so far as the Civil Suits O.S.No.937 of 1998 and O.S.No.616 of 2003 filed by Sri E.Narasimha Reddy concerning the land of an extent of Ac.6.28 gts, in Survey No.57/A of Karmanghat Village, have been dismissed as withdrawn and hence no attempt can be made by those who represent the branch of Sri E.Narasimha Reddy to re-agitate the same questions all over. Nor can they lend support to the plaintiff in the suit O.S.No.945 of 1998.

It is no doubt true that there is no absolute bar for receiving the documents though the same may not have been filed earlier. (See. Order VII Rule 14 (3) and Order VIII Rule 1A (3) CPC). Certain amount of discretion was left in the hands of the Court to grant leave to receive those documents. But however, the trial Court would certainly bear in mind the fact that the resistance offered by Sri E.Narasimha Reddy's branch in the form of O.S.No.937 of 1998 and O.S.No.616 of 2003 has

ended by the dismissal of those two suits as not pressed and withdrawn. Therefore, Sri E.Narasimha Reddy's branch, now represented by the respondent Nos.1 to 3 herein namely by his wife and 2 sons cannot seek to reintroduce their claim all over with regard to Ac.6.28 gts. The suit claim at the hands of the plaintiffs in O.S.No.945 of 1998 is confined to Ac.12.20 gts situated in Survey No.57/A, Karmanghat village. The lis in O.S.No.945 of 1998 is, therefore, confined only to this extent of land. Hence, the trial Court may have to be conscious and careful in appreciating the evidence that respondent Nos.1 to 3 representing Sri E.Narasimha Reddy's branch can bring. Further, they cannot bring forth any material or evidence in support of the claim of the plaintiffs in O.S.No.945 of 1998. It is wholly appropriate for the trial Court to remember that the plaintiff in a suit has to necessarily succeed on the strength of the case put in by him but can never take advantage of the defence offered on the opposite side. Accordingly it would deal with the documents now marked by it at the instance of D.W.3.

The suits O.S.No.945 of 1998 and O.S.No.987 of 1998 are pending for nearly 17 long years. Too much time has elapsed in deciding these 2 suits. Therefore, the trial Court shall receive the documents now sought to be filed but would examine carefully their relevancy and admissibility and proceed further in deciding the 2 suits as expeditiously as possible.

With the above observations, the revisions stand disposed of. No order as to costs.

The miscellaneous petitions, if any pending in these revisions, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

