

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2643 of 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the petitioners/defendants, aggrieved by the order dated 17.06.2015 passed in I.A. No.28 of 2015 in O.S. No.12 of 2001 on the file of the Junior Civil Judge at Metpally.

The facts, which led to file this Revision are as under :

The respondents/plaintiffs filed O.S. No.12 of 2001 against the petitioners herein seeking declaration of title, recovery of possession and for mandatory injunction in respect of land admeasuring 90 sq. yards of the area out of Ac.0.09 guntas of land i.e., 1089 sq. yards in Sy.No.1253 situated at Metpally and for delivery of the suit land to the plaintiffs by dismantling the illegal construction therein. The averments in the said suit are to the effect that the plaintiffs, who are the real brothers constituting a joint Hindu family are residing at different places by their occupation and for their convenience they have nominated 4th plaintiff, as their nominee, to look after the case. One Vangapally Sathamma W/o. late Muthyam Rao, who is the mother of the plaintiffs is said to be the owner and exclusive possessor of a vacant land to the

extent of Ac.0.09 guntas corresponding to 1089 sq. yards in Sy.No.1253 situated at Metpally proper and mandal. It is stated that mother of the plaintiffs was given pattadar pass book and title deed in respect of the said land. In the year 1998 she died intestate leaving the plaintiffs. The land devolved upon the plaintiffs as being the legalheirs. It is stated in the plaint that the defendants, who are wife and husband respectively are strangers to the above said land and they have no right and interest over the same. In furtherance of their malafide intention, the defendants illegally constructed a commercial complex to the extent of first floor roof level by opening doors and windows into the land of plaintiffs and occupying an extent of 90 sq. yards of the land out of total land admeasuring 1089 sq. yards on the eastern side of the said land. Though the plaintiffs have requested them not to proceed with the construction, the defendants constructed upto the first floor roof level without heeding to the request of plaintiffs. Under those circumstances, the above suit came to be filed.

The defendants filed their written statement opposing the same.

After completion of the entire trial, at the time of arguments, the I.A. in question came to be filed by the petitioners/plaintiffs, requesting the Court to receive the document, which is a financial support document. The contention of the petitioners/plaintiffs is that the document,

which is supposed to receive, is to strengthen their case and since the present suit is filed for a declaration, burden of proof is on the plaintiffs to prove their case. Respondents/Defendants filed Counter stating that the document which is sought to be brought on record is irrelevant to the present case and only with a view to drag the proceedings, the said application is filed. It is the further case of the respondents/defendants that no reasons are stated as to the relevancy of the document and also as to how it is necessary for deciding the case on hand. It is also the contention of the respondents/defendants that the present application, which has been filed at the stage of the argument, cannot be entertained in view of the bar under Order VII Rule 14 of Code of Civil Procedure. After considering the rival arguments, the trial Court allowed the application subject to proof and relevancy. Challenging the same, the present Revision is filed.

The learned counsel for the petitioners herein mainly submitted that even in the year 2003 the respondents/plaintiffs filed I.A.No.71 of 2003 requesting the Court to receive certain documents and document which is sought to be received now, was also mentioned in the said I.A. as Document No.3. The said application was allowed on 24.06.2003. It is his case that thereafter an application was filed to recall P.W.1 and the

documents were sought to be marked through him. It is his argument that the objection raised by the counsel for the respondents, with regard to receiving the document, cannot be accepted.

On the other hand, the learned counsel for the respondents while reiterating the argument that was advanced before trial court, submits that the document which was sought to be received as additional evidence in I.A. No.71 of 2003, is different, from the document which is sought to be marked now. According to him, the title of both the documents is different and as such the request of the petitioners cannot be accepted.

The short point that arises for consideration is:

“Whether the trial court was right in allowing the I.A., filed for receiving and marking of the documents ?”

As seen from the order, the trial Court allowed the I.A., and received the document subject to proof and relevancy. It is to be seen that though there is a bar under Order VII Rule 14 C.P.C., with regard to production of the documents after filing of the plaint, under sub-rule (3) thereof vests power in the Court to grant leave to file the documents at a later stage but such power has to be exercised only upon the party satisfying the Court that, for convincing reasons, those documents could not be filed earlier. There can not be any hard and fast rule for the Court to exercise discretion while granting leave under

sub-rule (3) of Rule 14. The affidavit, which has been filed before the trial court shows that the court earlier reopened the suit, recalled the plaintiff witness for marking the documents before the Court and that the petitioners/plaintiffs have taken the leave of the Court and filed certain certified copies of Registered Will deeds and other financial support surety bond scribed in Urdu along with English translation. Pursuant to an objection taken by the learned counsel for the respondents, at the time of marking of the documents on the ground that the translation was not done by authenticated person, the same were returned. Complying with the said objection, the plaintiffs obtained certified copy of the financial support bond vide C.C. No.103/2015 along with translation done by Navprabhath Translations and sought the document to be received and marked. At that stage objections came to be raised. As stated earlier, the Court only allowed the parties to receive the documents subject to its proof and relevancy, leaving it open to the petitioners to raise objection with regard to its relevancy and proof at the time of marking.

Therefore, it is clear that the petitioners herein were given an opportunity to oppose the marking of the documents. As argued by the learned counsel for the respondents, the said order does not by itself lead to mark the document through P.W.1. It is ordered to be received

subject to proof and relevancy. It is seen from the record, which has been placed before the Court, that earlier the petitioners filed I.A. No.85 of 2014 in O.S. No.12 of 2001 seeking to recall of P.W.1 for marking certain documents which are also filed before the Court for adjudication of the case. Similarly I.A. No.69 of 2003 was also filed seeking permission of the Court to receive the documents and for getting the same marked as exhibits in the suit. The order passed in I.A. No.71 of 2003 is placed before this Court, wherein the request of the plaintiffs was ordered, but no material is placed before this Court to show as to whether these documents which are sought to be marked as exhibits in I.A. No.71 of 2003, are marked through P.W.1.

It is to be noted that the courts must always exercise sound discretion while dealing with the applications, for leave, to file additional material, for the reason that, if the material sought to be produced has relevance to the issues involved in the suit and helps the Court to determine the issues properly and effectually, the Court must exercise its discretion in favour of allowing such evidence. Therefore, the Court below has rightly exercised its discretion in allowing such an application. Without going into the issue as to whether the document which was sought to be marked as document No.3 in I.A. No.71 of 2003 is the document which is now sought to be marked in the present I.A., the present C.R.P. is disposed of leaving it open to the petitioners to raise objections with

regard to its relevancy and proof at the time of marking.

With the above direction, the C.R.P. is disposed of.
No order as to costs. Miscellaneous Petitions pending if
any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 27.08.2015

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