

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.6034 of 2012 and 2230 of 2015

COMMON ORDER :

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

2. The petitioner in both these Revisions is plaintiff in O.S.No.91 of 2011.

3. He filed the suit for declaration of title and for injunction against the respondents.

4. The petitioner examined himself as PW.1, and the matter was posted for further evidence of petitioner. At that stage, the petitioner filed I.A.No.1931 of 2012 under Order 18 Rule 17 C.P.C. to re-call PW.1, and I.A.No.1932 of 2012 under Order 7 Rule 14 C.P.C. to receive certified copy of the registered sale deed bearing Document No.13838/1984 dt.23.11.1984.

5. In the affidavit filed in support of this application it was merely stated that at the time of the petitioner being examined as PW.1, by mistake, he did not file this document; that it is a document which is very important to prove his case; and therefore, it was necessary to re-call him as a witness, and permit him to adduce this document

in his evidence.

6. This application was opposed by the other side.

7. They contended that petitioner having referred to the above document in the plaint ought to have filed it along with the plaint, since it is mandatory under the amended Civil Procedure Code, and since there is no explanation whatsoever as to why it was not filed either along with the plaint or his chief-examination affidavit, this application should be rejected. They also contended that the endorsement on the document now sought to be filed indicates that it was obtained on 03.03.2010, much prior to the filing of suit, and the petitioner did not assign any reason why he had not filed it earlier. They further pleaded that the document sought to be filed is also only a registration extract, but not original; and it cannot be received and admitted in evidence, since it is secondary evidence.

8. By common order dt.10.10.2012, the Court below dismissed the two applications. It pointed out that petitioner had not assigned any specific reason except that by mistake it was not filed earlier; that this document had been filed in an earlier suit O.S.No.618 of 2005; and therefore, the plea of mistake pleaded by petitioner cannot be believed. It held that the document in question was obtained on 03.03.2010 as per the endorsement on it, and so it was within the knowledge of petitioner, but he acted

negligently in not producing it and not marking it when he was giving evidence; that in the absence of any reason which prevented him from filing the document earlier, it cannot be received in evidence and marked as an exhibit. Consequently, the court below dismissed I.A.No.1931 of 2012 which was filed to re-call PW.1.

9. Challenging the same, the present two Revisions are filed.

10. Heard Sri P.R. Prasad, counsel for petitioner; and Sri G. Rama Rao, counsel for respondent nos.1 to 4 in both the Revisions.

11. The counsel for petitioner contended that the orders passed by the Court below are unsustainable and since the suit was filed for declaration of title and injunction, and substantial stakes of petitioner were involved, the Court below ought to have granted leave to petitioner to file the said document; that in the applications filed therein, it was pleaded that on account of mistake the document was not filed earlier, and such a plea is adequate; and the court below ought to have granted leave.

12. On the other hand, the counsel for respondents refuted the said contentions and supported the order passed by the court below.

13. Order 7 Rule 14 (3) C.P.C. states that a document which ought to be produced in court by the plaintiff when the plaint is presented but is not produced, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

14. In my considered opinion, grant of leave is not for the mere asking, and the plaintiff seeking to file a document which was not filed by him along with the plaint should give a satisfactory explanation as to why it could not be filed along with the plaint.

15. A plea of mistake cannot be accepted because if such a plea is accepted, in no case can the above provision of law be implemented.

16. It is not disputed that the registration extract of the document was obtained on 03.03.2010 by petitioner. Therefore, the petitioner had this document in his custody when he filed the suit in the year 2011, but yet he did not file it with the plaint. The petitioner now cannot take advantage of his own negligence and seek to introduce the said document at a later stage.

17. Therefore, I do not find any merit in CRP.No.6034 of 2012 and CRP.No.2230 of 2015, and they are accordingly dismissed. No order as to costs.

18. As a sequel, miscellaneous petitions pending, if

any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.08.2015

Ndr/*