

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.4253, 4292 & 4293 of 2014

Date: 23-11-2015

Between:

Ganta Venkata Subbamma

.... Petitioner

AND

Lankela Madhava Reddy and 5 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.4253, 4292 & 4293 of 2014

COMMON ORDER:

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These three Civil Revision Petitions are being disposed of by this common order as they arise out of common cause of action.

The plaintiff in O.S.No.396 of 2006 on the file of Junior Civil Judge, Kodad is the petitioner herein. The respondents are defendants.

The suit was filed for perpetual injunction against the defendants in respect of vacant site admeasuring 469 square yards in Survey Nos.212, 213 and 222 in Block No.3 situated at Kodad village and Mandal, Nalgonda District. The plaintiff filed three applications, I.A.No.593 of 2014, I.A.No.594 of 2014 and I.A.No.595 of 2014 for reopening of her evidence, to receive the document and to recall PW.1 for limited purpose of getting marked the certified copy of the

plaint in O.S.No.212 of 1999 on the ground that the learned counsel for the defendants brought to the notice of the Court for the first time at the time of advancing the arguments that the possession of the suit schedule property was delivered on 21-02-1996 to DW.5. The said applications were opposed by the defendants stating that the arguments on behalf of the plaintiff were completed, entire evidence was also closed on 04-08-2014 and when it was posted for reply arguments on 10-09-2014, the above applications were filed after seeking adjournment. The averment that the advocate for the defendants pleaded with regard to delivery of possession on 21-02-1996 in the arguments was also denied. It is the case of the defendants that the plaintiff was never in possession of the suit schedule site at any time after it was sold away to DW.5 and she was aware of the same. The certified copy of the plaint in O.S.No.212 of 1999 is not at all relevant for the purpose of the case. After considering the rival pleadings and hearing the learned counsel on both sides, relying on the judgment of the Supreme Court reported in 2013 (4) ALD 3 (SC), the trial court dismissed the applications with costs by a common order dated 29-10-2014. Challenging the said common order, the above Civil Revision Petitions are filed.

The affidavit filed in support of the applications discloses that O.S.No.212 of 1999 was filed by the defendant on 13-09-1999. The arguments on behalf of defendants 2, 4 and 5 was advanced on 10-09-2014 stating that the plaintiff delivered possession of the schedule property on 21-02-1996 and immediately after conclusion of the arguments on 10-09-2014, the plaintiff obtained certified copies of the plaint and other documents in O.S.No.212 of 1999 filed by DW.5 and since the plaintiff was advised to file certified copy of the plaint in O.S.No.212 of 1999 filed by DW.5 in order to refute the contentions advanced by the learned counsel for DW.5, the plaintiff filed the above applications. The trial Court noticed that Exs.A.3 and A.4 were marked and they relate to the proceedings in O.S.No.212 of 1999. The case of the defendants is that the certified copy of the plaint in O.S.No.212 of 1999 is not at all relevant and necessary for proper adjudication of the matter.

A perusal of the written statement filed by the defendants show that the defendants had stated that the plaintiff sold away the suit schedule site to the 3rd defendant through an agreement of sale dated 21-02-1996. Since the plaintiff did not execute a registered sale deed, the 3rd defendant filed

O.S.No.212 of 1999 and the plaintiff handed over the registered sale deed No.586 of 1995 dated 07-02-1995 to the 3rd defendant on the date of agreement itself and the said suit was decreed on 10-03-2000 in favour of the 3rd defendant. The registered sale deed was executed pursuant to the 3rd defendant filing E.P.No.13 of 2003 and the 3rd defendant was in possession and enjoyment of the suit schedule site, till he sold away the property to the 1st defendant. Thus, there is no specific averment relating to delivery of possession on the date of execution of the agreement of sale. But, now it appears that in the arguments advanced on behalf of the defendants, it was stated that the property was delivered on 21-02-1996 by the plaintiff, who was the defendant in O.S.No.212 of 1999. In those circumstances, the plaintiff herein wants to produce a copy of the plaint in O.S.No.212 of 1999, to show the admission made by DW.5, who was the plaintiff therein with regard to the possession. Since the plaintiff's suit is for permanent injunction, the said fact would be crucial for determining the case of the parties. At this stage, this Court is not posted with entire evidence regarding possession and in any event it is not necessary for this Court to record a finding with regard to the possession. However, the issue before this Court in the present Civil Revision Petitions is with regard to the tenability of the applications filed by the petitioners at the belated stage and reviewing the order passed by the trial Court.

The learned counsel for the revision petitioner relied on **Billa Jagan Mohan Reddy and another v. Billa Sanjeeva Reddy and others, Sultan Saleh Bin Omer v. Vijayachand Sirimal, Kancherla Sradha Devi v. Sripella Sivaramaraju and others, G.P.R. Housing (P) Ltd., Hyderabad v. C. Prithvi Raj Reddy and others** and **Lukka Srinivasa Rao @ Venkateswarlu v. Lukka Sivaiah**. Learned counsel for the respondents, on the other hand relied on **Guduru Nirmala v. Guduru Ashok Kumar** and **Bagai Construction v. Gupta Building Material Store**.

It is not necessary for this court to consider all the above decisions cited at the bar for considering the case on hand but can be disposed of on the basis of facts. What has to be seen in this case is, whether the plaintiff's petitions have to be allowed or not. The Trial Court dismissed the applications on the ground

that the petitioner was aware of the proceedings in O.S.No.212 of 1999 and also marked Exs.A.3 and A.4 relating to those proceedings in the present suit and hence the present applications should not be allowed at this belated stage. But the trial Court overlooked the fact that there was no categorical statement with regard to the possession in the written statement and the plaintiff wants to take advantage of the statement made by DW.5, who was plaintiff in O.S.No.212 of 1999, in the present proceedings. Though the present applications are filed after conclusion of arguments, since this suit is for permanent injunction filed by the plaintiff and the applications are filed by the plaintiff, the plaintiff cannot be said to be procrastinating the matter or the applications are filed for an oblique motive. The defendants are not prejudiced in any manner. As pointed out by this Court in the above observations, the certified copy of the plaint may be necessary in support of her case and to what extent that can be used by the plaintiff is for the trial Court to decide ultimately in the case. The evidence of any party to proceedings should not normally be shut, but the stage at which those applications filed can be considered and the party committing laches can be put on terms. In view of the same, the applications can to be allowed subject to certain conditions. The learned counsel for the petitioner fairly submitted that the plaintiff will not prolong the proceedings and she would enter the witness box and the chief-examination would be confined to the marking of the certified copy of the plaint in O.S.No.212 of 1999 with one sentence.

In the circumstances, the applications filed by the petitioners are allowed with exemplary costs of Rs.5,000/- (Rupees five thousand only) payable to the defendants in the suit and with further condition that PW.1 shall be examined only for the purpose of marking the proposed document and the cross-examination thereon shall be restricted to that aspect. The learned counsel for the plaintiff shall be given an opportunity to submit his arguments based on the said evidence in his reply arguments and the judgment shall be pronounced on or before 31-12-2015.

The Civil Revision Petitions are allowed accordingly. No costs.

A.

RAMALINGESWARA RAO, J

Date: 23-11-2015

Note: Issue C.C in three days.

B/o.

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