

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.3208 OF 2015

ORDER:

Assailing the order, dated 24.7.2015, passed in I.A.No.445 of 2013 in A.S.No.8 of 2013 on the file of the Senior Civil Judge at Huzurabad, Karimnagar District, wherein and whereunder an application filed by the petitioner/appellant under Order XLI Rule 27 C.P.C. requesting the Court to receive certain documents produced as additional evidence was dismissed, the present Civil Revision Petition is filed.

2. The facts which led to filing of the present Revision are as follows:

The brief averments of the plaint are as follows:

The plaintiff claims himself to be the absolute owner and exclusive possessor of land admeasuring Ac.1.10 guntas in Sy.No.436. In the year 1989 the said land fell to his share due to family arrangement. It is stated that till the month of August, 2005, the suit land was supervised and assisted by the father of the plaintiff, who was in actual possession and enjoyment of that land. The defendant, who was the neighbouring land owner, approached the plaintiff and wanted to enter into an agreement of sale in respect of the southern portion of the suit land, which facilitates him to regularise the shape of his land. The price was fixed at Rs.88,000/- irrespective of the extent, for which, the defendant paid a sum of Rs.53,000/- towards part sale consideration. It is stated that the defendant was dodging to pay the balance of sale consideration on one pretext or the other. It is stated that though the plaintiff requested the defendant to

pay the balance amount, instead of paying the same, the defendant started trying to interfere with the peaceful possession and enjoyment of the property. It is stated that on 23.10.2006 and 27.10.2006, the defendant along with his followers tried to encroach into the land which was refuted by the plaintiff. After obtaining the copies of the pahanies for the years 2000 to 2004, O.S.No.164 of 2006 came to be filed seeking permanent injunction against the defendants, his men and agents.

3. A written statement was filed by the defendant denying the averments made in the plaint. As per the written statement, the defendant claims himself to be in possession of the suit schedule land since 26.5.2003 and cultivating the same. It is stated that as the plaintiff was in need of money, he approached the defendant to purchase the suit land, for which he agreed, and fixed the price at Rs.88,000/-. An advance amount of Rs.53,000/- was paid. It is stated that, it was the plaintiff who was avoiding to receive the balance sale consideration and register the property. It is further stated that after receiving the advance amount, an agreement of sale was also executed whereby, the plaintiff agreed to receive the balance sale consideration on or before Diwali Festival of 2003. He also agreed to pay the debts over the said land. It is stated that in spite of several demands and requests to settle the accounts and receive the balance sale consideration, the plaintiff is evading the same. Coming to know about the fraudulent intention, a lawyer's notice came to be issued on 15.9.2004 to the Village Secretary to record his possession. It is stated that after entering into an agreement of sale, the defendant was put in possession and his name was also included in the pahanies for the years 2003-2004 and hence prayed to dismiss the suit.

4. After analysing the evidence available on record, the trial Court dismissed the suit. Questioning the same, the plaintiff preferred A.S.No.8 of 2013 before the Court of the Senior Civil Judge,

Huzurabad. Pending appeal, the appellant preferred I.A.No.445 of 2013 requesting the Court to take on record the additional evidence viz., pahanies for the years 2005-2006 to 2010-2011.

5. The appellate Court dismissed the application on the ground that the petitioner herein applied for certified copies of pahanies only on 28.2.2013, which was subsequent to disposal of the suit by the lower Court and as such, the same is an afterthought. Since the chief affidavit of the petitioner was filed on 13.9.2012 and his cross examination was recorded on 14.11.2012, the Court held that no reasons are forthcoming as to why no steps were taken immediately for producing the documents. Hence, the appellate Court held that the petitioner has not exercised due diligence though the existence of documents were within his knowledge. Challenging the same, the appellant filed the present Revision Petition.

6. Learned counsel for the petitioner/appellant mainly argued that the documents in question are necessary for a proper adjudication of the case and if the said documents are not brought on record, the petitioner would be put to irreparable loss. It is his case that only after pronouncement of judgment, the petitioner came to know about the rejection of the documents filed by him. In order to establish his possession, he applied for the documents and placed them before the Court for arriving at a just decision of the case. The other ground urged by the learned counsel for the petitioner is that the I.A. cannot be decided independently and the same has to be heard along with the main appeal. In support of his claim he placed reliance on the judgment of this Court in ***V.Ranga Reddy v. C.Rama Krishna Reddy and another***^[1].

7. On the other hand, learned counsel for the respondent/defendant would submit that no reasons are forthcoming

as to why the petitioner kept quiet without producing them before the Court. It is his case that the documents, which are obtained by the petitioner, are an afterthought and the reason now given cannot be accepted. It is his case that the petitioner, in collusion with the revenue authorities, created an un-registered document and brought into existence during appeal. Relying upon Order XLI Rule 27 C.P.C., he submits that if the documents are already produced and refused by the lower Court and the documents which are not within the knowledge of the party can only be produced in the appeal and not the documents which are in existence even at the time of the filing of the suit. In support of his case he placed reliance on the judgment of the Apex Court in **State of Karnataka and another v. K.C.Subramanya and others**^[2].

8. Before proceeding further, it will be relevant to extract Order XLI Rule 27 C.P.C. which reads as under:-

“Production of additional evidence in Appellate Court –

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

From a reading of the above provision, it is clear that the appellant can produce the documents when the Court from whose decree, the appeal has been preferred, has refused to admit the evidence which he ought to have been admitted or the party seeking to produce additional evidence establishes before the Court that in spite of exercise of due diligence, such evidence was not within his knowledge or could not after the exercise of due diligence be produced by him at the time of decree against him was passed or the appellate Court by itself can summon the documents to enable it to pronounce the judgment.

9. While dealing with the scope of Order XLI Rule 27 of C.P.C. the Apex Court in ***Union of India v. Ibrahim Uddin and another***^[3] held that, in general, the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Court held that the Appellate Court may permit additional evidence only if the conditions laid down in this rule are found to exist. The Apex Court further held that the discretion is to be exercised by the court judicially by taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be lead in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. It was further held that in case the court comes to the conclusion that the application filed falls within the four corners of the

statutory provisions itself, the evidence may be taken on record, however, the court must record reasons under what circumstances the application has been allowed.

10. While dealing with the stage as to when such an application is to be considered, the Apex Court after referring to the case of **Arjan**

Singh v. Kartar Singh & Others^[4] held as under:

“An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court.”

11. In **State of Rajasthan v. T.N.Sahani**^[5], the Apex Court after referring the judgment in **K.Venkataramaiah V. Seetharama**

Reddy^[6] held as under:

“It may be pointed out the scope of unamended provision of Order XLI Rule 27 (c) of C.P.C. that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the Court to consider at

the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the Court to look into the documents and for that purpose amended provision of Order XLI Rule 21 (b) C.P.C. can be invoked. So the application under Order XLI Rule 27 should have been decided along with the appeal.”

12. From the judgments referred to above, it is clear that an application under Order XLI Rule 27 of C.P.C. should normally be decided along with the appeal.

13. Though the learned counsel for the respondents relied upon the judgment of the Apex Court in ***State of Karnataka and another v. K.C.Subramanya and others case (2 supra)*** but the said judgment may not be of much help to him since the stage at which a petition under Order XLI Rule 27 of C.P.C. came to be filed never fell for consideration before the Court.

13. In view of the Judgments referred to above, the Civil Revision Petition is allowed and the order under challenge is set-aside. The lower appellate Court is directed to hear and decide the I.A.No. 445 of 2013 in A.S.No.8 of 2013 along with the main appeal and pass orders in accordance with law. No order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

17.11.2015

Amd/gkv

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[\[1\]](#) 2005 (2) ALD 629

[\[2\]](#) (2014) 13 SCC 468

[\[3\]](#) (2012) 8 SCC 148

[\[4\]](#) AIR 1951 SC 193

[\[5\]](#) 2001 (10) SCC 619

[\[6\]](#) AIR 1963 SC 419