

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.4516 of 2015

ORDER:

This Civil Revision Petition is filed by the petitioner/1st defendant aggrieved by the order dated 23.4.2015 in I.A.No. 394 of 2014 in O.S.No. 36 of 2009 on the file of Senior Civil Judge, Sompeta, whereunder, the trial Court dismissed the petition filed by the present petitioner under Order 8 Rule 1(3A) CPC to condone the delay in filing the petition, mentioned documents and to receive them in the evidence and mark as exhibits on behalf of the first defendant. The list mentioned documents are “(1) registered settlement deed 23.2.2001 (2) registered Will dated 23.2.2001 and (3) Family Settlement dated 22.12.2001”. The trial Court dismissed the said petition with an observation that they were filed at the belated stage though the party was in possession of those documents. Hence, the present Civil Revision Petition.

2) Notice was given to the contesting first respondent/plaintiff. Respondents 2 to 4 are shown as proforma respondents as they are defendants 2 to 4 in the suit.

3) Heard Sri K.Manik Prabhu, learned counsel for petitioner and Sri G.Dharma Rao, learned counsel for first respondent.

4) The submission of learned counsel for petitioner is that the petition mentioned documents were very much referred in the written statement and they could not be filed along with the written statement as they were misplaced and there is no wanton delay in filing them and unless an opportunity is given

to the first defendant to file them, his rights in the suit, which is a suit for partition will be jeopardized.

5) Opposing the Civil Revision Petition, learned counsel for the first respondent contended that though the petitioner claimed to have been in possession of the documents, he did not file them at the right time and hence, the trial Court rightly rejected his application. He sought for dismissal of Civil Revision Petition.

6) In the light of above rival contentions, the point for determination is:

“Whether there are any merits in the Civil Revision Petition to allow”

7) **POINT:** A perusal of the record shows that the suit for partition was filed by the respondent/plaintiff claiming 6/15th share in the plaint schedule property. Present petitioner is the first defendant therein, who filed written statement and contesting the suit. A perusal of the copy of the written statement shows that all the above mentioned documents were referred in the written statement. Thus, it is clear that the documents sought to be produced were not introduced all of a sudden but a reference about them was made in the written statement. Hence, the submission of the petitioner can be considered by imposing costs.

8) In the result, the Civil Revision Petition is allowed and the impugned order dated 23.4.2015 in I.A.No. 394 of 2014 in O.S.No. 36 of 2009 on the file of Senior Civil Judge, Sompeta,

is set aside and the trial Court is directed to receive the above referred documents during the evidence of first defendant on his depositing costs of Rs.500/- (Rupees Five Hundred Only) with the trial Court and also on his establishing the relevancy and admissibility of the documents. Respondent/plaintiff is at liberty to challenge the veracity of those documents in her cross-examination.

As a sequel thereto, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 20.11.2015

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Note: Furnish copy by Monday