

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Civil Revision Petition No.2272 of 2015

Between:

Sri Sai Educational Society,
Rep. by its Correspondent and founder
Thamminana Rama Rao.

.... Petitioner

And

Lolla Krishna Veni.

... Respondent

DATE OF JUDGMENT PRONOUNCED: **11.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.2272 of 2015

ORDER:

In this petition filed under Article 227 of the Constitution of India, revision petitioner/defendant seeks to set aside the order dt:10.03.2015 in I.A.No.47 of 2015 in O.S.No.104 of 2010 passed by the learned Senior Civil Judge, Sompeta

whereby and whereunder the learned Judge dismissed the petition filed by the petitioner under Order VIII Rule 1 r/w 151 Code of Civil Procedure, 1908 (for short "C.P.C") sought to receive list mentioned documents and mark them as exhibits on his behalf.

2) The respondent/plaintiff filed O.S.No.104 of 2010 against petitioner/ defendant seeking a decree for recovery of possession of the plaint schedule property and for recovery of Rs.3,98,000/- towards arrears of rent and damages on the plea that the plaintiff leased out plaint schedule property to the defendant under lease deed dt: 26.02.2008 to enable him to run a degree college but later the defendant misused the premises and caused damage to the premises and building and he did not use the building for the purpose for which it was let out and also that he failed to pay rent since inception.

3) The petitioner/defendant opposed the suit contesting that he intended to start a degree college under the name and style Sri Krishna Sai Degree College, Kanchili in the year 2008 and plaintiff's husband—L.Narayana Murthy, who was a good friend of the defendant offered plaint schedule premises which stood in the name of his wife/plaintiff and so a registered lease deed dt:26.02.2008 was entered into by the defendant and plaintiff. However, as per the norms, the Higher Education Committee visited the said premises on 25.05.2008 and rejected permission to the defendant to run Degree College as

the plaintiff schedule site and building were not suitable to run the Degree College. So the defendant took another site of one Bisan Kumar Gupta in S.R.C.Puram village in Kanchili Mandal under registered lease deed dt: 03.06.2008. The second Educational Committee visited the said premises on 25.06.2008 and satisfied with the premises and accorded permission to the defendant to run the Degree College. So the defendant had run the college in the said premises covered by lease deed dt: 03.06.2008 till 2009-10. Subsequently, the defendant purchased a site of about Ac.0.47 cents from Vankala Narsamma under registered sale deed dt:07.04.2010 and shifted his college to his own site and running the Degree College in the said site. It is his contention that the registered lease deed dt: 26.02.2008 executed by the plaintiff and defendant was only a nominal document and was never acted upon. The terms and conditions of the lease deed dt: 26.02.2008 were never enforced between the parties. When the Higher Educational Committee rejected permission to establish Degree College in the site of the plaintiff, the lease deed became nominal and the relationship of landlord and tenant was ceased between the parties. He thus prayed for dismissal of the suit.

4) While-so, the petitioner/defendant filed I.A.No.47 of 2015 seeking permission to file the petition mentioned documents with a request to receive them and mark them as exhibits on his behalf.

5) Respondent/ Plaintiff opposed the petition on the ground that the documents which were sought to be marked were available with him at the time of filing written statement but he did not chose to file them as specified under law and he filed them belatedly only to drag on the proceedings and further, those documents were not relevant to the case on hand.

6) The trial Court agreeing with the contention of the plaintiff, dismissed the petition.

Hence the instant Civil Revision Petition.

7) Heard both sides.

8) The point for determination in this petition is:

“Whether there are merits in this C.R.P to allow?”

9) **POINT**: Order VIII Rule 1A C.P.C mandates that the defendant who bases his defence upon a document or relies upon any document in his possession or power, he shall enter such document in a list and shall produce it in Court when the written statement is presented by him and shall also deliver the document and a copy thereof along with written statement. The consequences of failure to follow the aforesaid mandate is mentioned in sub-rule(3) to the effect that a document which ought to be produced in Court by the defendant under this rule but not so produced shall not without the leave of the Court be received in evidence on his behalf at the time of hearing of the suit. It is in the context of the

aforesaid provision, the case of the petitioner has to be scrutinised.

10) His main contention was that the lease deed dt:26.02.2008 executed between him and plaintiff was only a nominal one and never acted upon, since the Higher Education Committee did not accord permission to setup the Educational Institution in the building and site covered by the lease deed and therefore, the suit is not maintainable. His further case is that instead he obtained site from one Bisan Kumar Gupta under a registered sale deed dt: 03.06.2008 and had run the degree college in that premises for sometime and later shifted to his own site purchased under a registered sale deed dt: 07.04.2010. These facts he vividly narrated in his written statement. Now coming to the proposed documents, he listed about seven documents in the petition. They are:

- 1) *Lease deed dated 03-06-2008 executed between defendant and Bisan Kumar Gupta*
- 2) *No Due Certificate dated 26-05-2010 from Section No.C11-161/2009-10 issued by Andhra University.*
- 3) *Approved Building Plan dated 22-04-2010 issued by the Gram Panchayat, Kanchili in my favour.*
- 4) *Soundness Certificate dated 13-07-2011 issued by Deputy Executive Engineer, P.R.Sub-Division, Palasa.*
- 5) *Check List/Fire Safety recommended Certificate dated 08-08-2011 issued by the Asst. Dist. Fire Officer.*
- 6) *College Tax Receipt No.79 dated 01-02-2014 for the year 2011-2012 issued by the Gram Panchayat Secretary, Kanchili.*

7) *College Tax Receipt No.87 dated 01-02-2014 for the year 2013-2014 issued by the Panchayat Secretary, Gram Panchayat, Kanchili.*

11) According to him, the above documents are crucial to prove his defence claim to the effect that he did not run the college in the plaint schedule building but conducted elsewhere. A perusal of the above listed documents would *prima-facie* show that they are relevant for the purpose of the case of the defendant. According to him, the reason for not filing the above documents along with written statement was that they were necessary for running the college and hence he did not file them earlier. This reasoning ofcourse was not found favour with the trial Court. However, in my considered view, the reason can be accepted and leave can be granted. The first document is a registered lease deed dt:03.06.2008 and it was referred in the written statement also. The other documents were issued by different authorities like Andhra University, Gram Panchayat, Kanchili, Deputy Executive Engineer, P.R Sub-Division, Palasa and Assistant District Fire Officer etc. These documents will advance the cause of the defendant. When the parties are litigating on their valuable rights, the procedural law shall not be used to stifle their rights unless the party seeks an order has absolutely no case or his attempt is only to drag the proceedings without any purpose. In the instant case, as already observed, the proposed documents are *prima-facie* material for the purpose of case of

the defendant and he was under bonafide belief that he required them for running his college. Most importantly from the description of the documents, they are not possible to be fabricated at a belated stage to suit his case. In these circumstances, the petition needs consideration.

12) Accordingly, this Civil Revision Petition is allowed by setting aside the order dt: 10.03.2015 in I.A.No.47 of 2015 in O.S.No.104 of 2010 passed by the learned Senior Civil Judge, Sompeta. He is directed to permit the petitioner/defendant to produce the petition list mentioned documents and they shall be marked as exhibits on his behalf subject to proof and admissibility under relevant law.

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

U. DURGA PRASAD RAO, J

Date: 11.08.2015

scs