

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.5411 of 2011 and 5412 of 2011

COMMON ORDER :

These Revisions are filed challenging the common order dt.27.09.2011 in I.A.No.499 of 2011 and I.A.No.500 of 2011 in O.S.No.658 of 2009 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad.

2. The petitioner herein is the plaintiff in the above suit.

3. The suit was filed by petitioner seeking perpetual injunction restraining respondent from interfering with his alleged peaceful possession and enjoyment of plaint schedule property.

4. Written statement was filed opposing the suit claim.

5. Issues were framed. Trial commenced.

6. The petitioner filed his affidavit-in-lieu of chief-examination and was also cross-examined subsequently by respondent.

7. Thereafter, I.A.No.499 of 2011 was filed by petitioner under Order 18 Rule 17 C.P.C., praying the court to re-call PW.1.

8. I.A.No.500 of 2011 was filed under Order 7 Rule

14 (3) C.P.C. praying the court to receive documents which were not filed along with the plaint.

9. In the affidavit filed along with these applications, it is stated that during cross-examination questions were put to him as to whether he had proof of purchase made by M/s. Royal Co-Operative Housing Society and whether it had purchased 36 guntas of share of Mr. Yellaiah and other connected matters; since it was the first time he was deposing in Court, his mind became blank and he could not answer questions properly; that when he was questioned whether he verified the title deeds and records, he thought that he was personally being asked the said question, and since he did not know how to verify the title deeds he had got them verified by an Advocate by name Mr. Reddy, at Bowenpally; that he had obtained certified copies of five sale deeds including the one (Sale Deed) purchased by M/s. Royal Co-operative Housing Society Ltd.; that he be permitted to file the said documents, and for that purpose he may be recalled under Order 18 Rule 17 C.P.C.

10. This application was opposed by respondent contending that lame excuses had been given by petitioner for not filing the documents in question along with plaint; petitioner had failed to explain the delay in filing the documents and that certified copies sought to be submitted by petitioner were not legible; and respondent is the sole and absolute owner of 36 guntas of land in

Sy.No.73 although the said M/s. Royal Co-Operative Housing Ltd. is alleged to have purchased the same from other persons.

11. By order dt.27.09.2011, the Court below dismissed both the applications. It held that these applications were filed after completion of cross-examination of PW.1 and petitioner as PW.1 in his cross-examination, stated that he had not got verified the title deeds prior to his purchase of the suit schedule property and had also deposed that he cannot file the title deeds. It held that contrary to the above statements he had filed these applications and therefore, the documents now filed, cannot be taken into consideration. It also held that there was also no prior explanation by petitioner why he has not filed these documents along with plaint, and if petitioner is permitted to be examined further, the purpose of cross-examination would be defeated.

12. Challenging the same, these Revisions are filed.

13. The counsel for petitioner has taken me through the cross-examination of petitioner as PW.1 by respondent's counsel.

14. He contended that the statement in the impugned orders that petitioner had deposed that he did not get verified the title deeds prior to his purchase and he cannot file the title deeds, is contrary to law; that the title deed of petitioner was filed along with plaint and the documents

now sought to be filed are the link documents; petitioner felt it necessary to file these documents only after he was cross-examined with regard to them by respondent; petitioner has shown sufficient cause for not filing these documents along with the plaint; and the court below erred in dismissing these applications.

15. On the other hand, the counsel for respondent contended that the reasons given by petitioner in the affidavit filed in support of these applications is vague, irrelevant and it is not open to petitioner to seek to add anything to the cross-examination already recorded by court by way of this affidavit; and that the order passed by the court below is correct and did not warrant any interference by this Court under Article 227 of the Constitution of India.

16. After perusing the cross-examination of PW.1 by respondent it is clear that petitioner had stated in his evidence that he verified the link documents at the time of purchase of property. He specifically denied the suggestion that he had not verified the documents prior to purchase of property. Therefore, the statement in the impugned order of court below, that petitioner had stated that he had not verified the title deeds prior to purchase of plaint schedule property, is not correct.

17. Admittedly, the petitioner had filed the sale deed under which he purchased the plaint schedule property in his evidence. The petitioner now seeks to file certified

copies of the link documents only. The questions regarding the link documents were put to him in the cross-examination by the counsel for respondent. The petitioner, having realized the importance of filing the link documents, has now obtained certified copies thereof and has filed the present application to permit him to file these documents and also to re-call him for marking them. During cross-examination he has categorically stated that he has not filed these documents, but he had tried to get them.

18. Since the documents in question are certified copies of link documents and petitioner having realized the importance of filing these documents from the manner in which he was cross-examined by respondent, has filed the application to re-call PW.1 and to mark them, I am of the opinion that the Court below should have allowed both I.A.No.499 of 2011 and I.A.No.500 of 2011.

19. No doubt, the application seeking permission to file these documents is not happily worded, but it is clear from contents thereof that petitioner realized the importance of link documents from the way he was cross-examined, and by way of abundant caution also sought to file them.

20. Therefore, I am of the opinion that the Court below has committed error in rejecting these applications, and it ought to have allowed them.

21. Therefore, these Revisions are allowed and the common order dt.27.09.2011 in I.A.No.499 of 2011 and I.A.No.500 of 2011 in O.S.No.658 of 2009 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad is set aside; and I.A.No.499 of 2011 and I.A.No.500 of 2011 in O.S.No.658 of 2009 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad are allowed.

22. Accordingly, CRP.No.5411 of 2011 and CRP.No.5412 of 2011 are allowed. No order as to costs.

23. Miscellaneous applications, pending if any in these Revisions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2015

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