

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA

RAO

C.R.P.No.881 OF 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.19.11.2014 in I.A.No.133 of 2014 in O.S.No.8 of 2008 of the Junior Civil Judge, Sultanabad.

2. The petitioners herein are the defendants in the above suit. The said suit was filed by the respondent for perpetual injunction restraining the petitioners from interfering with his alleged possession and enjoyment of the suit schedule property.

3. Written statement was filed by the petitioners on 04.12.2008 denying the claim of the respondent.

4. In September, 2014, the petitioners filed I.A.No.133 of 2014 under Order VIII Rule 1 (3) CPC seeking leave of the Court to file attested copies of four documents i.e., a) Registered document No.1822/1987 dt.28.12.1987 b) MRI report dt.15.02.2008, c) MRI report dt.06.08.2008 and d) Sanction certificate of GDPL 182 and GDPL 399 issued by the Office of the Additional Assistant Engineer Operation, APNPDCL Odela dt.13.12.2010.

5. In the affidavit filed in support of the said application, it is

stated that these documents had been referred to in the written statement filed by the petitioners and attested copies thereof had been now filed along with the IA. It is further contended that these documents are public documents having evidentiary value and no prejudice would be caused to the petitioner if they are received in evidence.

6. Counter affidavit was filed by the respondent opposing this application. It was contended that the documents filed by the petitioners are only xerox copies attested by the Tahsildar and are not certified copies and therefore, they cannot be received in evidence. It was denied that the documents filed by the petitioners are public documents. He also pointed out that the xerox copies filed along with the I.A. were not visible and therefore they cannot be admitted in evidence. Other contentions on the relevancy of the documents are also stated.

7. By order dt.19.11.2014, the Court below dismissed the said application.

8. It held that the documents 'a', 'b' and 'c' were available at the time when the written statement was filed, but they were not filed along with the written statement and at the time of filing chief examination affidavit as DW1, they have filed this application without giving any explanation for the delay. It also held that document 'd' cannot be received because it does not have any round seal of the sanctioning authority and it is

simply written in half page making it clear that it was for the purpose of loan only.

9. Challenging the same this Revision is filed.

10. Counsel for the petitioner contended that the Court below erred in dismissing the I.A. and since the documents 'a', 'b' and 'c' had already been referred to in the written statement and since they are public documents, the Court below should have allowed the said I.A. since no prejudice would be caused to the respondent. He also contended that the document 'd' dt.13.12.2010 is a document issued subsequent to the filing of the suit and it should have been at least received by the Court below and while receiving it, the Court below was not entitled to express any opinion on its relevancy or admissibility.

11. Counsel for the respondent did not dispute the fact that no reason has been assigned by the petitioner in I.A.133 of 2014 as to why the documents 'a', 'b' and 'c' referred to above were not filed along with the written statement although they were referred to in it. Obviously they were in the custody of the petitioners when the written statement was drafted and filed. Therefore, they ought to have been filed along with the written statement.

12. Granting of leave to file documents under Order VIII Rule 1(3) CPC is not for the mere asking and when the petitioners have not shown any reason why they could not file

the documents 'a', 'b' and 'c' at the time of filing of the written statement, they are not entitled for grant of leave.

13. However, coming to document 'd', which bears the date 13.12.2010, it is a document which came into existence after filing of the suit. Therefore, the petitioner could not have filed it along with the written statement which they had filed on 04.12.2008. Therefore, the Court below should have allowed the I.A. with regard to the said document.

14. I am of the considered opinion that while deciding whether or not receiving these documents under Order VIII Rule 1(3) CPC, the Court below was not entitled to go into its relevancy and its admissibility.

15. So, the Civil Revision is partly allowed. The order dt.19.11.2014 in I.A.No.133 of 2014 in O.S.NO.8 of 2008 of the Junior Civil Judge, Sultanabad is set aside; and the I.A. is allowed only with regard to reception of the document 'd' dt.13.12.2010 issued by the office of the Office of the Additional Assistant Engineer Operation, APNPDCL Odela. It is made clear that the respondent is entitled to object to the said document's admissibility as well as relevancy and if such an objection is raised, the Court below shall first decide the said objection in accordance with law and then proceed further. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions pending if any,

shall stand closed.

M.S.RAMACHANDRA RAO, J

31st August, 2015.

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