THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 1783 of 2015

ORDER:

The order dated 07.04.2015 passed in I.A.No.108 of 2015 in O.S.No.7 of 2007, is challenged before this Court.

2. The petitioner herein is the plaintiff in O.S.No.7 of 2007. He initially filed a suit in O.S.No.35 of 2002 on the file of Junior Civil Judge, at Suryapet, seeking injunction against the defendants with respect to the property in Survey No.193. The 1st respondent/1st defendant filed his written statement. Thereafter the petitioner sought amendment of the plaint. By way of the amendment, the suit came to be altered to the one for declaration of title and recovery of possession; thereby the nature of the suit itself came to be altered totally. On account of the amendment, the suit was transferred to the Court of Senior Civil Judge, at Suryapet, where it was re-numbered as O.S.No.7 of 2007. The 1st respondent/1st defendant filed his written statement on 04.04.2008. After several adjournments, when the suit is at the stage of trial, an interlocutory application i.e., I.A.No.108 of 2015, under Order VIII Rule 1A of the Code of Civil Procedure (CPC), was filed by the 1st defendant, seeking to receive certain documents viz., title deeds and pattadar passbooks, in evidence and mark them as exhibits on his behalf. In the affidavit filed in support of the said I.A., the 1st defendant stated that he had already filed all the pahanies before the Court, but the title deeds and pattadar passbooks could not be filed earlier as he was completely bed-ridden and was not in a position to take necessary steps. He further stated that he was selling lands in bits and pieces to meet his necessities on account of his ill health. It is further stated that no prejudice as such would be caused

to the petitioner/plaintiff if the I.A. is allowed by permitting the 1st defendant to file the said documents. The petitioner/plaintiff filed a counter affidavit opposing the I.A. In the counter, it has been categorically stated that the suit is at the stage of evidence, particularly at the stage of examining DW1, and the said documents ought to have been filed by the 1st defendant along with his written statement in the year 2008 itself; and that the documents are not genuine and they were obtained in collusion with the revenue authorities. It was further stated that the delay for not filing the documents at the earlier stage itself was not properly explained by the defendant and hence the I.A. does not deserve consideration and the same is liable to be dismissed. The learned Senior Civil Judge, considering the precedents placed before him by both the parties, allowed the I.A., on the condition of payment of costs of Rs.1,000/-. Challenging the same, the present revision is filed.

3. Learned counsel for the petitioner Mr. Ashwin Kumar, by specifically drawing to the notice of this Court the Order VIII Rule 1 of CPC, submits that the provisions of the Rule 1 are not satisfied; particularly that there is no pleading in the written statement about the documents sought to be filed by the 1st defendant and that the interlocutory application is filed at a belated stage and, more importantly, no leave was sought as required under Order VIII Rule 1A of CPC. He relies on the judgments of this Court in **Ravi Satish v. Edaka Durga Prasad and others** and **Guduru Nirmala v. Guduru Ashok Kumar**. On the other hand, learned counsel for the respondent relies on the judgments in **Sultan Saleh Bin Omer, Petitioner v. Vijayachand Sirimal, Respondent**, **G.P.R. Housing (P) Ltd., Hyderabad v. C. Prithvi Raj Reddy and others**, **Kancherla Saradha Devi, Petitioner v. Saripella Sivaramaraju, and others, Respondents** and **Billa Jagan Mohan Reddy & another v. Billa Sanjeeva Reddy & others**.

4. Heard learned counsel for the petitioner and the learned counsel for the respondent. Perused the record.

5. So far as the legal principles are concerned, they are well settled. In the present case, the suit was initially filed for injunction, but later by amendment of plaint it came to be altered to the one for declaration of title and recovery of possession. A perusal of the written statement filed on 24.06.2003 reveals that the same is a detailed written statement and it was categorically asserted therein that the plaintiff had based his case on forged and fabricated documents and further it was asserted that defendant No.2 had filed an appeal before the Revenue Divisional Officer, Suryapet for cancellation of the same. In the written statement, pahanis for the years 1954-55 and upto 2000-01 were also specifically mentioned and filed along with the written statement of 2003. Suffice it to say that there is some mention with regard to various revenue proceedings. Further, the affidavit filed in support of the I.A. states that the defendant was unwell and was bed-ridden. This aspect of the matter is not disputed. Though, in strict sense, Order VIII Rule 1 of CPC mandates filing of all documents along with the written statement, Rule 1A carves out an exception; thereby giving a leeway in cases where documents could not be filed along with the written statement. The argument of the learned counsel for the petitioner that there has to be strict compliance of Order VIII Rule 1 of CPC cannot be countenanced as Rule 1A provides an exception in a given case where documents are not filed along with the written statement. In the present set of facts, the Court below is satisfied with the reasons stated with regard to the delay; particularly the delay resulting on account of the ill health of the 1st defendant. Considering the aspect that valuable property rights of the parties are involved, and that too of illiterate persons, I do not see any grave illegality or infirmity in the order of the Court below in allowing the I.A.No.108 of 2015. However, the costs of Rs.1,000/- awarded in a case of this nature are not adequate and in that view of the matter the order passed by the learned Senior Civil Judge is modified to the extent of enhancing the costs to Rs.5,000/-, payable to the plaintiff. The costs shall be paid to the plaintiff within a period of two weeks from the date of receipt of a copy of this order.

6. Subject to the above modification, the revision petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

18th September, 2015

ksm

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 1783 of 2015

18th September, 2015

ksm