

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

Civil Revision Petition Nos. 3481 of 2014 and 425 of 2015

Common Order:

Since these two Revisions arise between the same parties and out of the same suit, they are being disposed of by this common order.

2. The petitioner in both the Revisions is the plaintiff. He filed the suit in OS No.57 of 2008 on the file of the Senior Civil Judge, at Sircilla against the respondents herein for partition of the suit schedule properties and for separate possession of 1/3rd share. A written statement was filed by the respondents taking a plea that there was a prior partition.

3. During the course of evidence of the first respondent, it appears that he stated that he had obtained electricity meter service connection No.367 after the partition i.e., about 16 years back.

4. After the evidence of the respondents was closed, the petitioner filed IA No.524 of 2014, under Order 18 Rule 17 CPC, to reopen his evidence and IA No.525 of 2014, under Order 7 Rule 14(3) CPC, to receive documents indicating that the said service connection No.367 was, in fact, issued on 31.03.1990 i.e., 25 years back. He also sought to file papers relating to another service connection No.16 said to be standing in the name of one Agina Shankaraiah, who is their vendor. Apart from these documents, a sale deed bearing document No.4388 of 2012 executed by one of the defendants, was also requested to be received in evidence.

5. The Court below, by separate orders, dated 22.08.2014, dismissed both the said applications accepting the objection of the respondents that there is no pleading in the plaint or mention about these documents in the evidence of the petitioner. It also blamed the petitioner for delay in disposal of the suit stating that he was availing the remedies one after the other only with a view to protract the litigation to the maximum extent. It also observed that the petitioner did not explain as to why he could not obtain these documents much earlier at least when the respondents revealed their defence.

6. Challenging the same, these Revisions are filed.

7. Counsel for the petitioner contended that the petitioner could not have filed these documents with the plaint because reference to the electricity connection was made only in the written statement by the respondents and in their evidence in the Court and to contradict the evidence of the first defendant, who has stated that the electricity meter service connection No.367 was obtained after the partition, and that the other service connection No.16 still stands in the name of their vendor Agina Shankaraiah, the documents relating to these two service connections are now sought to be produced in the evidence. He also contended that the sale deed being document No.4388 of 2012 was also requested to be received in evidence because the first defendant had wrongly stated that he had not sold 0.17 gts., of land out of suit survey No.368 to one Bondugula Srinivas. He further contended that the Court below is not right in blaming the petitioner for the delay in disposal of the suit and denying the petitioner an opportunity to lead evidence to disprove the case of the respondents.

8. Counsel for the respondents, on the other hand, refuted the other allegations and supported the order passed by the Court below. He

contended that the suit is of the year 2008 and that the plea of prior partition was taken both in the original written statement dated 26.02.2009 and in the additional written statement dated 13.04.2011 and at the stage when the suit is coming up for arguments, these two applications have been filed.

9. It is not disputed by the counsel for the respondents that the plea of obtaining service connection No.367 after the partition was raised in the written statement. Therefore, the petitioner cannot be blamed for not filing the documents along with the plaint to disprove the date when this service connection was obtained. The document with regard to other service connection No.16 is also sought to be marked to show that it stands in the name of the Vendor Agina Shankaraiah. Even the sale deed, bearing document No.4388 of 2012, had come into existence long after the suit was filed and the petitioner seeks to have it received in evidence in order to disprove the plea of the first defendant that he had not sold 0.17 gts., of land out of suit survey No.368 to Bondugula Srinivas.

10. It cannot be said that the petitioner could have imagined these facts at the time of filing of the plaint and file these documents at that time. Therefore, the Court below is not correct in stating that the petitioner has not shown due diligence in filing these documents and in rejecting both IA Nos.524 and 525 of 2014.

11. In this view of the matter, both the Civil Revision Petitions are allowed and the orders dt. 22.08.2014 passed in both the IA Nos.524 and 525 of 2014 in OS No.57 of 2008 are set aside and consequently both the IA Nos. 524 and 525 of 2014 are allowed. However, the Court below shall give opportunity to the respondents to adduce rebuttal evidence, if they so desire, and then decide the suit as expeditiously as possible, preferably within a period of four (4) months from the date of receipt of a copy of this order. There shall be

no order as to costs.

12. As a sequel thereto, the miscellaneous petitions, if any, pending in these Civil Revision Petitions shall stand closed.

M.S. RAMACHANDRA RAO, J.

Date: 16.09.2015

Nsr