

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

C.R.P.NOS. 4900, 4914 & 5066 OF 2014

Between:

Yagantipalli Ramamurthy Achari

... petitioner /defendant

And

Smt. Gunja Lakshmi Devi W/o Kothuru

... Respondent/plaintiff

DATE OF JUDGEMENT PRONOUNCED: 06-08-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NOS.4900, 4914 & 5066 OF 2014

COMMON ORDER:

These three Revisions arise between the same parties and out of the same suit and therefore, they are being disposed of by this common order.

2. Petitioner herein is the defendant in O.S.No. 229 of 2003 on the file of I Additional Senior Civil Judge (FTC), Nandyal.
3. The respondent/plaintiff filed suit for perpetual injunction restraining the petitioners from interfering with their alleged possession and enjoyment of the plaint schedule property.
4. A written statement was filed by the petitioner opposing the suit claim. Thereafter, trial

commenced and concluded and the matter was posted for arguments.

5. At that stage, the petitioner filed I.A.No. 17 of 2014 to reopen the suit, I.A.No. 18 of 2014 to recall himself (DW-1) to mark certain documents which he wanted the court to receive and which had been filed by him in another I.A.No. 19 of 2014. In the affidavit filed in support of these applications, it was contended that there was another suit O.S.No. 227 of 2005 between the parties which had been disposed of on 8.6.2011; that he could not file decree and judgment in that suit; but now he thought that it is better to file them in order to show that the said suit is disposed of. He also stated that he filed another suit O.S.No. 283 of 2011 against the respondent and her husband for declaration of title in regard to plaint schedule property and for injunction; the subject matter of the present suit and that suit are one and the same; in O.S.No. 283 of 2011 an advocate commissioner had been appointed; he had filed the report and plan and the certified copies of the said commissioner's report along with the plan, notice issued by him, warrant, work memo and the photos filed along with the said report and they are also required to be looked into by the First Additional Senior Civil Judge, Nandyal in this suit; and therefore they should be received in evidence in exercise of power of the said Court under Order 8 Rule 1A(3) CPC.

6. Counter affidavit was filed to the said allegations by the respondent, who contended that the petitioner had exhibited Exs. B1 to B-12 as per order in I.A.No. 26/12 dated 8.11.2012, on 8.11.2012 itself; by that date, the documents now sought to be filed were already in her custody; but the petitioner had not offered any explanation for the delay in filing them. It is further contended that inspite of giving sufficient opportunities to the petitioner, he did not appear before the Court and so the Court treated that he had no evidence to adduce and pronounced the judgment on 2.4.2008, but he then filed I.A.No. 178 of 2008 to set it aside and the said I.A was allowed on 22.8.2008 on payment of costs and subject to condition that the petitioner shall file all the documents and produce all the witnesses on 18.9.2008, failing which the petition shall stand dismissed; the respondent had questioned the same in C.R.P.No. 5655 of 2008 but the same was dismissed with an observation that the petitioner shall not be allowed to protract the matter under the guise of letting in evidence. It is contended that the petitioner therefore, should have produced all documents and witnesses and close his evidence. But he dragged on his evidence till 26.3.2014. She pointed out that even on 26.3.2014 when the petitioner sought time to let in further evidence, the Court below had taken note of the orders in C.R.P.NO. 5655 of 2008 dated 13.4.2011 and closed evidence; that she had submitted final arguments in the suit on 29.4.2014; and even thereafter ten adjournments had been taken by the petitioner and he filed the present applications. Therefore, she contended that filing of these applications by the petitioner is against the spirit of orders passed by the Court in C.R.P.No. 5655 of 2008 and so these applications be dismissed.

7. By separate orders dated 10.10.2014 these three applications have been dismissed by the Court below. The court below held that although subject matter of the present suit and O.S.No. 227 of 2005 and O.S.No. 283 of 2011 is one and the same, in view of the observations in the order passed by this Court in C.R.P.No. 5655 of 2008, the petitioner cannot be allowed to further protract the matter under the guise of letting in evidence. It held that when the suit is at the stage of hearing arguments of the petitioner and after the

arguments on behalf of the respondent were heard, these applications had been filed. It further held that the documents now sought to be filed are of no relevance and intentionally, the petitioner, to protract the matter, filed petitions and accordingly dismissed the petitions. Challenging the same, these three Revisions are filed.

8. Counsel for the petitioner contended that the orders passed by the Court below are erroneous and the court below had failed to exercise its jurisdiction vested in it by dismissing these applications. He further contended that O.S.No. 227 of 2005 had been decided only on 8.6.2011 long after the present suit was filed and therefore, the Court below should have permitted him to file the documents by allowing I.A. No. 19 of 2014 and also the other I.As.

9. Counsel for the petitioner has stated that on 8.11.2012, he had exhibited Exs. B1 to B12 and that his evidence was closed only on 26.3.2014. He has also not disputed that this Court while disposing of C.R.P.No. 5655 of 2008 on 13.4.2011 had observed that the petitioner shall not protract the matter under the guise of letting in evidence.

10. Admittedly, suit O.S.No. 227 of 2005 was decided on 8.6.2011 but no explanation was offered by the petitioner as to why till August 2014 he did not file the application to receive the judgment and decree therein. Even the report of the Advocate Commissioner, which is sought to be filed in I.A.No. 19 of 2014 is said to be dated 28.9.2011 and even though the said document was available on 8.11.2012 for the petitioner to file, he did not file it even though his evidence came to be closed only on 26.3.2014. This conduct of the petitioner indicates that the petitioner is only intending to protract the suit proceedings on some ground or the other and is also reflected by his conduct in seeking ten adjournments after the final arguments on the side of the respondents were submitted on 29.4.2014 and then filing these applications. The conduct of the petitioner is not bonafide and I am of the opinion that the petitioner has not made out any ground for grant of leave under Order 8 Rule 1A (3) of CPC to receive all the documents in question.

11. Therefore, I am of the view, that the Court below has rightly dismissed I.A.No. 19 of 2014. Once this I.A is dismissed there is no necessity to reopen the evidence and to recall DW-1. Therefore, I.A.No. 17 of 2014 and I.A.No. 18 of 2014 can also be said to have been rightly dismissed by the Court below. Therefore, I do not find any merit in these Revisions.

12. Accordingly, these three Civil Revision Petitions are dismissed. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06.08.2015
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