

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.2713 AND 2719 OF 2016

COMMON ORDER

The petitioner in these two revisions is the plaintiff in O.S.No.9 of 2009 on the file of the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. The said suit was filed for a declaration and injunction in relation to the suit schedule property. While so, the 1st defendant, the 1st respondent herein, filed I.A.Nos.234 of 2016 and 264 of 2016 therein under Order 8 Rule 1-A CPC to receive certain documents which were not filed along with the written statement. By way of I.A.No.234 of 2016, he wanted certain copies of documents received by him from the Court of the learned II Metropolitan Magistrate, Cyberabad, L.B.Nagar, relating to Crime No.876 of 2010, to be received by the trial Court, while under I.A.No.264 of 2016, he wanted to place on record an encumbrance certificate. Both the I.As. were contested by the petitioner-plaintiff. In his counter filed to the I.As., he specifically stated that the documents which were sought to be filed were photocopies and were inadmissible and that they had not been accepted by the criminal Court. He further stated that leave could not be granted by the trial Court to receive these documents belatedly. In his counter to I.A.No.264 of 2010 in O.S.No.9 of 2009, he further stated that there was no mention of the encumbrance certificate in the written statement and that the said document could not be received as a matter of course after amendment of the CPC.

The trial Court however ordered both the I.As. holding that the documents sought to be placed on record were admissible and that they could be received in evidence. Aggrieved thereby, the petitioner-plaintiff is before this Court. The order in I.A.No.234 of 2016 in O.S.No.9 of 2009 is the subject matter of C.R.P.No.2719 of 2016, while C.R.P.No.2713 of 2016 relates to the order in I.A.No.264 of 2016 in O.S.No.9 of 2009. Both the revisions were filed under Article 227 of the Constitution.

By interim order dated 10.06.2016 passed in C.R.P.No.2719 of 2016, this Court granted interim stay of further proceedings in the suit.

Heard Sri R.A.Achuthanand, learned counsel for the petitioner-plaintiff, and Sri T.Srikanth Reddy, learned counsel for the 1st respondent/1st defendant.

Perusal of the orders under revision reflects that the trial Court failed to take notice of the requirements of Order 8 Rule 1-A(3) CPC which provides that a document which ought to be produced in Court by the defendant with the written statement, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

At the stage of considering an application under this provision, what is required to be looked into by the trial Court is whether the defendant lacked *bonafides* or due diligence in not filing the document which is sought to be produced belatedly. The admissibility of such document in evidence would arise at a later stage and in the event the document so produced is a photocopy, necessary steps would have to be taken to mark it as secondary evidence. At the stage of examining an application under Order 8 Rule 1-A(3) CPC, the trial Court would therefore not be required to render a finding on the admissibility of the document produced belatedly. What is however required is that the trial Court examine the *bonafides* of the application and decide as to whether it should grant leave to the defendant to produce such a document belatedly.

However, in the present case, the trial Court completely lost sight of the legal requirements in relation to an application under this provision. The trial Court did not even notice the shortcomings in the pleadings and straight away held that the documents in question were admissible in evidence and could be received. This lapse on the part of the trial Court leaves this Court with no option but to set aside the orders under revision on this short ground and remit both the I.As. to the trial Court for consideration afresh in accordance with law.

The civil revision petitions are allowed. The matters are remitted to the file of the learned XIV Additional District and Sessions Judge, R.R.District at L.B. Nagar, for consideration afresh of the subject I.As. as per law. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

12th AUGUST, 2016

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