

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

CIVIL REVISION PETITION No. 3580 of 2011

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% Dated 28.01.2016

V. V. Govindarajulu @ Kondababu,
S/o. Late V. Vijaya Rama Rao Naidu,
Aged about 74 years, Occ: Business,
Residing at Anantapalli Vari Street,
Srikakulam Post and District, A.P.

... Petitioner

VERSUS

\$Sakalabhaktula Vaikunta Rao,
S/o. Late Neeladri, Aged about 74 years,
Occ: Business, resident of Amalapadu
Village, Vajrapukotturu Mandal.

... Respondent

!Counsel for Petitioner : Sri C.V. Rajeeva Reddy.

^Counsel for Respondent : Sri A. Rama Rao

<GIST:

>HEAD NOTE:

? Cases referred : 1) (2007) 5 Supreme Court Cases 730

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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ORDER:

This Civil Revision Petition is filed against the order dated 13.06.2011 passed by the Junior Civil Judge, Palasa, in I.A.No.100 of 2009 in O.S.No.17 of 1990.

The respondent/plaintiff filed the suit against the petitioner/defendant seeking specific performance of an agreement of sale based on a receipt dated 13.12.1979. It is the case of the plaintiff that the defendant had agreed to sell a piece of land, took a sum of Rs.2,000/- as advance and executed the receipt dated 13.12.1979. Since the original of the receipt dated 13.12.1979 was misplaced, it was not filed along with the plaint. Therefore, the plaintiff filed the above Interlocutory Application under Order VII Rule 14(3) C.P.C seeking permission to file the photocopy of the receipt dated 13.12.1979 and to mark it as an exhibit. The defendant opposed the application raising several contentions, particularly, inadmissibility of the photocopy of the receipt. The Court below, by order dated 13.06.2011, allowed the application. Aggrieved by the same, the petitioner/defendant filed this revision.

Sri C.V. Rajeeva Reddy, learned counsel appearing for the petitioner, while reiterating the averments made in the counter affidavit filed in the Court below, placed reliance on the judgment of the Supreme Court in ***J. Yashoda v. K. Shobha Rani***^[1] to support his contention that the photocopy of the document is

inadmissible in evidence, especially, when the original is not filed along with the plaint. He points out that in the affidavit filed in chief examination, at one place, the plaintiff stated that original receipt dated 13.12.1979 was filed along with the plaint and at another place, he stated that it was misplaced. He further submits that there was inordinate delay in filing the I.A, since the chief examination affidavit was dated 19.02.2008 and the I.A was filed on 20.04.2009. He further submits that great prejudice would be caused to the petitioner on account of the I.A being allowed and that the impugned order is virtually a non-speaking order since the Court below failed to set out the reasons for allowing the document to be taken on record.

On the other hand, Sri A. Rama Rao, learned counsel for the respondent supports the impugned order and submits that what all has been done by the Court below is only taking of the document on record and that itself does not affect the rights of the petitioner. He further submits that the question of consideration of admissibility or otherwise of the document could arise only when the same is being marked as an exhibit and the petitioner would have ample opportunity to object the marking of the document.

Perused the documents on record and considered arguments of both the parties.

After setting out the contentions of both the parties in brief, the Court below has made the impugned order holding as under:

“On considering the arguments of the petitioner and the respondent. I am of the view by allowing the petition and taking the document into record does not affect the rights of the defendant at preliminary stage that the plaintiff counsel stated that the entire suit based on the documents/evidence and this document supports of his contention in the interest of justice, this petition is allowed.”

The above-quoted portion of the impugned order reveals that

what all the learned Judge had done is to allow the document to be taken on record and without expressing any opinion with regard to the admissibility or otherwise of the document. In this context, it is worth mentioning that the application itself came to be filed under Order VII Rule 14(3) C.P.C.

Sub-rule (3) of Rule 14 of Order VII C.P.C reads as under:

“A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

The above sub-rule came to be substituted by Act 22 of 2002 with effect from 01.07.2002.

Order VII C.P.C itself specifically deals with the formalities that are required to be complied with while filing the suit, in particular, filing of the documents that may be relied on by the plaintiff to be annexed with the plaint, or in a given circumstance atleast make a mention of the nature of the documents in the list annexed to the plaint.

Order XIII C.P.C deals with production, impounding and return of documents. It gives one more opportunity to the parties to place on record the documents, which they could not place on record at the time of filing of the suit, on or before the settlement of issues, subject to seeking leave of the Court by explaining the reasons for their inability to place the same on record. In other words, there is no absolute bar on the Court to accept the documents, which they could not file at the time of filing of the suit, on or before settlement of the issues.

It is only a rigor which is sought to be imposed on the litigant public to be prompt and vigilant and that rigor is to some extent relaxed by giving opportunity to the parties to make an application setting out the reasons in what circumstances, they

could not place particular document on record. In a given case, if the Court is satisfied about the reason set out for not placing a particular document on record, the Court has discretion to allow the document to be taken on record.

In the instant case, the plaintiff had filed the suit seeking specific performance of an agreement of sale based on receipt dated 13.12.1979. In affidavit in chief, which was filed before the Court below on 19.02.2008, it was stated that Ex.A.1 receipt was already filed along with the plaint. However, in the affidavit filed in the Interlocutory Application on 20.04.2009, it was stated that the original of the receipt dated 13.12.1979 was misplaced and as such he seeks permission of the Court to place on record the photocopy of the said receipt, which was infact mentioned in the list of documents accompanying the plaint. The document, which is the basis for the suit, has not been denied. The learned Judge while allowing the document to be taken on record has considered this aspect and also the likely prejudice that may be caused to the petitioner.

Though the impugned order is somewhat cryptic, in the given set of facts, it cannot be termed as without reasons. Statutory provisions provide discretion on the Court to allow filing of a document in given circumstances. I do not find any reason to interfere with the order of the Court below as the discretion exercised cannot be said to be illegal.

The judgment cited by the learned counsel for the petitioner has no application to the facts on record, as in that particular case, the photocopy was sought to be relied on as secondary evidence, without fulfilling conditions precedent, which are required to be satisfied under the Indian Evidence Act, 1872. In the present case, such stage has not yet arrived, as the Court

below had only allowed the document to be taken on record and the same is yet to be marked, at which stage, the petitioner has ample opportunity to raise all contentions with regard to the admissibility or otherwise of the said documents.

The Civil Revision Petition is accordingly dismissed. Consequently, pending miscellaneous applications, if any, shall also stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Date: 28.01.2016

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[\[1\]](#) (2007) 5 Supreme Court Cases 730