

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL REVISION PETITION Nos.4232, 4278 and 4316 of
2015

COMMON ORDER:

These revisions are preferred challenging the common order dated 16.09.2015 in I.A.Nos.409, 410, 411 and 412 of 2015. The revision petitioners herein are defendant Nos.1, 4 and 5 in O.S.No.34 of 2008 and they filed I.A.No.409 of 2015 under Order VIII Rule 1-A C.P.C. seeking permission to file agreement dated 10.02.2008, I.A.Nos.410 and 411 of 2015 are filed under order XVIII Rule 17 C.P.C. to recall DW.1 and PW.1 respectively for the purpose of marking the above referred agreement dated 10.02.2008 and I.A.No.412 of 2015 is filed to reopen the suit. Plaintiffs resisted the applications filed on behalf of the defendant Nos.1, 4 and 5 and trial Court on a consideration of material recorded finding that applications are filed after conclusion of arguments on behalf of plaintiffs and if the defendants are permitted to reopen the evidence for the purpose of recalling witnesses and admitting that document, it would amount to fill up lacunas and on that ground dismissed all the applications. Aggrieved by the dismissal of above referred applications, present revisions are preferred.

2. Heard both sides.

3. Learned counsel for revision petitioners submitted that the document dated 10.02.2008 is an important

document to clinch the issue involved in the suit. He submitted a panchayat was held regarding the entries in the pahanies and in that connection an agreement dated 10.02.2008 was executed and revision petitioners due to oversight and also due to age factor and due to disturbance of mental peace, could not file this document along with the written statement or atleast before commencement of evidence, therefore, an opportunity may be given to revision petitioners to place this important document on record and trial Court can ultimately decide the correctness of this document and decide the issues involved in the suit. He further submitted that trial Court instead of examining the delay pleaded by revision petitioners in not filing this document earlier, went on to decide merits of the case, which is illegal and that the common order of the Senior Civil Judge, Siddipet, dated 16.09.2015 has to be set aside. He further submitted that a date may be fixed for examination of PW.1 and DW.1 for the purpose of marking this document and no prejudice would be caused to the plaintiffs if such a time is fixed.

4. On the other hand, learned counsel for plaintiffs submitted that the document said to have been executed by plaintiffs is produced at a belated stage that too after completion of evidence of both parties and completion of arguments of the plaintiffs' side. He submitted that the defendants having taken dates for arguments on the last date of argument they filed these petitions. He further

submitted that there is no reference about this document in the written statement and it is only to protract the proceedings, those petitions are filed and trial Court has rightly dismissed the applications and there are no grounds to interfere with the orders of the trial Court.

5. Now the point that would arise for my consideration is

Whether there is any error committed by trial Court in dismissing applications filed for recall of witnesses, receipt of document and reopen the case?

POINT :

6. As seen from the material, the main contention of revision petitioners is that they have not filed this document at the earlier stage due to loss of memory, oversight and age factor. Admittedly, there is no reference about this document in the written statement and it is well settled law that without any plea no party could be allowed to adduce any evidence either to improve or to put forth a new plea. As seen from the record, arguments on behalf of plaintiffs were completed on 22.07.2015 and thereafter the suit was posted to 05.08.2015 for the arguments of defendants and again it was posted to 12.08.2015 and at that stage these applications are filed. As rightly recorded by trial Court, if the revision petitioners are permitted to lead evidence with regard to a document that is filed after conclusion of arguments, it would definitely amounts to filling up the gaps or improving the case, which was not there in the

pleadings. The learned trial Judge has elaborately considered all the four applications with reference to material on record, I do not find any error either jurisdictional or factual to interfere by exercising the revisional jurisdiction. For these reasons, I am of the view that there are no merits in the revisions and all the revisions are liable to be dismissed.

7. Accordingly, revision petitions are dismissed.

8. Miscellaneous Petitions, if any, shall stand dismissed. No costs in all the revisions.

S. RAVI KUMAR, J

4th February 2016.

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