

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

CIVIL REVISION PETITION No.5170 of 2016

ORDER:

This Revision is filed by the petitioner challenging the order dt.28-01-2016 in I.A.No.462 of 2015 in O.S.No.207 of 2004 of the Principal Junior Civil Judge, Tanuku.

2. Petitioner is 2nd defendant in O.S.No.207 of 2004, which was filed by respondents seeking permanent injunction against the petitioner and another.

3. Petitioner had earlier filed O.S.No.166 of 2004 seeking permanent injunction against respondents. Both suits were tried together, common trial was conducted and evidence was recorded in O.S.No.207 of 2004 and the matter was posted for arguments.

4. The respondents in the Revision addressed arguments as plaintiffs in the main suit O.S.No.207 of 2004. After taking several adjournments, petitioner filed application I.A.No.462 of 2015 to reopen the matter for the purpose of filing certain documents and in particular to receive a registered mortgage deed showing that the extent of plaint schedule property is 120 sq. yards in O.S.No.166 of 2004 and not 102 sq. yards.

5. In the affidavit filed in support of this application, it is stated that at the time of preparing for arguments, the registered mortgage dt.30-08-1967, which mentioned the extent of 120 sq. yards became

available and that was why the application was filed to reopen the matter for the purpose of producing the document dt.30-08-1967.

6. Counter-affidavit was filed opposing this application stating that the plaint schedule property was only 102 sq. yards and at the stage when arguments of respondents have already been heard, it is not open to petitioner to reopen the evidence for marking this document and also for summoning the witness in regard to said document, particularly when there was no mention about the document in the written statement.

7. By order dt.28-01-2016, the trial Court dismissed the said application. It held that the suit filed by respondents was of the year 2004, that there was no mention about the registered mortgage deed dt.30-08-1967 in the written statement and if the petitioner is having custody of it, he should have filed it at least at the time of adducing his evidence during trial. It held that this document has been produced only with a view to drag on the proceedings.

8. Challenging the same, the present Revision is filed.

9. Learned counsel for petitioner sought to contend that the Court below erred in dismissing this application since it goes to the root of the matter and it ought to have allowed the said application and permitted reopening of the matter to mark this document dt.30-08-1967 and to summon the witness in support of the plea of petitioner.

10. Learned counsel for petitioner does not dispute that the boundaries in Ex.B-1 document dt.06-06-2001 relied upon by petitioner in O.S.No.166 of 2004 claiming relief of permanent injunction are correct. He only states that the extent is wrongly mentioned as 102 sq. yards instead of 120 sq. yards. Even assuming this contention is correct, it is settled law that boundaries prevail over extent. Therefore, no real prejudice is caused to petitioner if the mortgage deed dt.30-08-1967 is not taken into account by the Court below on the ground that it is produced 11 years after filing of the suit without mention of it either in the written statement or in the evidence adduced by petitioner.

11. I therefore do not find any merit in the Revision and it is accordingly dismissed. No costs.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-11-2016

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