

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.4385, 4500, 4501 and 4502 of 2013

COMMON ORDER:

These revisions under Article 227 of the Constitution of India are filed by the respondents-defendants assailing the common order dated 09.07.2013 of the learned Principal Junior Civil Judge, Puttur of Chittoor District, passed in IA.Nos.283, 284, 467, and 282 of 2013 in O.S. No. 110 of 2003 filed by the plaintiffs respectively to (i) reopen the suit [for the purpose of marking documents through PW1, cross-examining DWs1, 2 and 4, examining tenants and producing records by DW4]; (ii) receive documents; (iii) receive another set of documents and; (iv) recall PW1 for further examination in chief and DWs 1 to 3 for further cross-examination.

2. I have heard the submissions of Sri P.V. Vidya Sagar, learned counsel for the revision petitioners-defendants ('the defendants', for brevity) and of Sri M.N. Narasimha Reddy, learned counsel for the respondents-plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. The case of the plaintiffs as stated in the affidavits filed in support of the respective applications may be summarized as follows:

The plaintiffs brought the suit against the defendants for a perpetual injunction in respect of plaint schedule immovable property. The 1st plaintiff was examined as PW1. Plaintiffs 2 and 3 are his brothers and he is representing them in his capacity as their GPA holder. The plaintiffs also examined PWs2 to 4. Exhibits A1 to A43 were marked on their side. 1st and 2nd defendants were examined as DWs1 and 2; they further examined DWs3 and 4 on their side. Exhibits B1 to B47 were marked on their side. Advocate Commissioner's report and its annexures were marked as exhibits C1 to C3. While so, the 1st plaintiff traced out recently some more documents, which were mixed up with old

papers. They are electricity demand bills and receipts for the periods between 13.07.2006 and 12.02.2012; 16.03.2006 and 13.03.2012; 18.11.2005 and 12.01.2012; 16.03.2006 and 13.03.2012; 17.01.2006 and 12.02.2012; 13.12.2010 and 13.04.2012; 14.02.2011 and 12.02.2012; 14.02.2011 and 16.05.2012; 13.12.2010 and 13.04.2012; and, 14.02.2011 and 10.11.2012, issued in favour of the three plaintiffs. The other set of documents are notices exchanged between the defendants and the tenants under the plaintiffs in occupation of the property. The said documents as mentioned in the petition list in IA.no.467 of 2013 are in-fact marked as exhibits B31 to B38 in the connected suit in OS.No.12 of 2003 on the file of the same Court between the parties. Since the said documents are also to be marked in the present suit, the plaintiffs obtained certified copies of the said documents from other suit and filed with one of the instant applications. All the said documents are very important to substantiate the case of the plaintiffs. There is no wilful delay in filing the said documents. Hence, the plaintiffs filed the application to reopen the evidence and two applications to receive the two sets of documents besides the application for recalling PW1, for marking and proving the said documents, and DWs 1 to 3 for further cross examination.

4. The defendants filed counters resisting all the applications. The substance of their defence, in brief, is this:

The suit is filed in the year 2003 for perpetual injunction. The allegations that notices were issued by the defendants to the tenants under the plaintiffs and that the tenants gave individual replies to the notices of the defendants are false. The notices and reply notices are created. The suit was adjourned on a number of occasions. Despite giving such adjournments no steps were taken to obtain the certified copies of the documents, which were marked as exhibits B1 to B38 in the connected suit. No sufficient grounds are urged and established for permitting to file the two sets of documents namely

copies of exhibits B31 to B38, copies of notices and reply notices allegedly exchanged between the defendants and the tenants, in the property. The documents are not material documents. Hence, for the purpose of marking the said documents, evidence need not be reopened; and PW1 need not be recalled for further chief examination; and the witnesses examined on the defendants' side need not be recalled for further cross examination; and no further witnesses (tenants) need be examined.

5. On merits and by the common order impugned in these revisions, the trial Court allowed the petitions filed for reopening the matter and receiving the documents viz., IA.Nos467, 282 and 284 of 2013; however IA.no.283 of 2013 filed for recalling witnesses was partly allowed to the extent of recalling PW1 for further examination in chief and marking the documents; the said application was dismissed insofar as it related to recalling the witnesses on the side of the defendants for further corss-examination and calling the tenants as witnesses. Aggrieved thereof, these revisions are filed by the defendants. Though the application in IA.no.283 of 2013 was partly dismissed, the plaintiffs did not prefer any revision.

6. The learned counsel for the defendants while reiterating the contentions in the counters of the defendants urged that the suit is of the year 2003 and that the subject petitions were filed belatedly and that the plaintiffs are aware of the documents marked in the other suit but wilfully neglected to mark the very same documents in their suit and that the exchange of notices is denied by the defendants and that the documents are not material documents and do not advance the case of the plaintiffs even if permitted to be marked and that therefore the trial Court ought not to have shown any indulgence in an old suit and ought not to have allowed the applications filed by the plaintiffs.

7. On the contrary, the learned counsel for the plaintiffs, while reiterating the case of the plaintiffs and while supporting the common orders of the Court

below had urged that the Court below, on considering the facts correctly and the circumstances in a proper perspective, had passed reasoned common orders in all the applications by exercising the discretion judiciously and that the well-reasoned common orders of the Court below do not warrant interference in these revisions filed before this Court under Article 227 of the Constitution.

8. I have bestowed my attention to the facts and the submissions. In a suit for perpetual injunction, the plaintiffs are seeking the reliefs viz., reopening of the evidence, recalling PW1 for further examination in chief for the purpose of marking certain documents, the details of which are referred to supra while stating the pleadings of the parties. One set of documents were already marked in the connected suit as exhibits B31 to B38. The plaintiffs are seeking permission to mark certified copies of the said documents in this suit also, which is being simultaneously tried along with the connected suit. The other set of documents are electricity demand bills and consumption receipts for various periods including the periods subsequent to the institution of the suit. Insofar as the said documents, the plaintiffs stated that the said documents are mixed up with the other records and therefore they could not be filed earlier. Moreover the said documents are demand notices and receipts issued by a public department. Insofar as the notices exchanged are concerned, though the defendants denied any such exchange of notices, that aspect has to be considered only after the necessary evidence and rebuttal evidence is adduced. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy and when the Court feels that interests of justice require that the documents may be received, then the court would receive the documents by exercising the judicious discretion, and would consider their effect thereafter at a later stage. When such is the settled position and, when the documents are being sought to be produced in the trial court, before the arguments are completed, normally they would be received and an opportunity

would be given to prove them and also to adduce rebuttal evidence, if any; and their relevance and effect would be considered while deciding the issues raised and involved in the *lis*. Therefore, on the ground that the exchange of notices is denied, the plaintiffs cannot be precluded from marking the documents and adducing evidence in relation to the said documents, as the genuineness or otherwise of the said documents need not be considered at this stage. Moreover, the suit is in the trial Court and the trial has not concluded. If the documents are permitted to be exhibited, in the well considered view of this Court, there will be evidence in the form of documents and the said evidence may be eventually helpful to the Court in effectively adjudicating the *lis*. When the trial Court exercised its discretion judiciously and allowed the petitions and permitted PW1 to be recalled for marking the documents by granting leave to file the two sets of documents, in the considered view of this Court, no interference is called for in these revisions filed under Article 227 of the Constitution of India.

9. In the result, all the Civil Revision Petitions are dismissed without costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

28th November, 2016
Vjl

M. SEETHARAMA MURTI, J