

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.R.P. Nos. 4664, 4888, 4889 AND 4891 OF 2016

COMMON ORDER :

The petitioners herein are the plaintiffs. They filed O.S. No. 69 of 2008 on the file of the Junior Civil Judge's Court at Kota seeking permanent injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment of the plaint Schedule 'A' and 'B' properties. Subsequently, the said suit was re-numbered as O.S. No. 236 of 2015 on the file of the Junior Civil Judge's Court at Naidupet, SPSR Nellore District.

The petitioners claim to have acquired the suit schedule property, by way of succession, from their mother, who claimed to have acquired the same through an insufficiently stamped and unregistered agreement of sale dated 02.08.1989 executed by one Sri Muppalla Narasa Raju. While so, the petitioners have taken out I.A. No. 140 of 2016 in the suit seeking permission to adduce secondary evidence in respect of the documents, viz. certified copies of the agreement of sale dated 02.08.1989, death certificate of their mother Lekkala Venkata Subbamma dated 03.01.2005 and the pattadar passbook of their mother and xerox copy of the Will dated 01.11.1999 executed by Sri Muppalla Narasa Raju. The learned Judge, by order dated 01.03.2016, allowed the prayer sought for therein, subject to payment of stamp duty. When an objection was taken with regard to document No.1 to the effect that it was stamped inadequately, the petitioners filed yet another Application, I.A. No. 485 of 2016 to impound the certified copy of agreement of sale dated 02.08.1999. That Application

came to be dismissed on 16.06.2016 on the ground that certified copy of the document cannot be impounded. Hence, the petitioners have filed I.A. No. 642 of 2016 to call for the original agreement of sale dated 02.08.1989 filed in O.S. No. 234 of 2008 on the file of the Senior Civil Judge's Court at Gudur to get the same marked in O.S. No. 236 of 2015. The said Application was also dismissed. Consequently, I.A. No. 641 of 2016 filed seeking to reopen the suit for adducing further evidence was also dismissed. Thereafter, the petitioners approached the Senior Civil Judge's Court at Naidupet seeking return of the document dated 02.08.1989 by filing C.F. No. 3058 which was also rejected on 24.08.2016 as not maintainable. However, on a memo filed by the petitioners on 16.08.2016, the original agreement of sale dated 02.08.1989 was made over to the petitioner on 19.08.2016.

Now, the petitioners have taken out I.A. No. 805 of 2016 under Order VII Rule 14(3) A of the Code of Civil Procedure (for short, 'C.P.C.') to condone the delay in filing the document mentioned in the list of documents and receive the same for marking purpose through P.W.1, I.A.No. 804 of 2016 under Sections 38(2) and 40 of the Indian Stamp Act, 1899 to send for the document styled as 'agreement of sale dated 02.08.1989' for Rs.1,20,000/- to the District Registrar of Gudur District for impounding, levy of deficit stamp duty and penalty purposes, I.A.No. 803 of 2016 to reopen the suit for filing a petition under Order VII Rule 14(3) A C.P.C. seeking permission from the Court condoning the delay and to file the same for marking purpose and

I.A.No. 802 of 2016 under Order XVIII Rule 17 C.P.C. to recall P.W.1 for marking the document filed by them.

The learned Junior Civil Judge, after considering the respective submissions, while holding that it is not permissible to bring on record a document under Order VII Rule 14(3) of the Code, came to the conclusion that there was no diligence on the part of the petitioners in bringing on record the document, which, in normal circumstances, is required to be placed on record along with the plaint and accordingly, dismissed all the Interlocutory Applications.

Learned counsel for the petitioners Smt. K. Pallavi would submit that at every stage, the petitioners have shown due diligence in prosecuting the matter, but it is only on account of the procedural delays, especially due to filing of the document dated 02.08.1989 in O.S. No. 234 of 2008 on the file of the Senior Civil Judge's Court at Gudur, the same could not be filed along with the suit, at the first instance, and as I.A. No. 140 of 2016 came to be allowed, the petitioners were under the *bona fide* impression that the original document was not required. However, pursuant to the order passed in I.A.No. 485 of 2016, immediate steps were taken by the petitioners and as soon as they could obtain the original document from the Senior Civil Judge's Court, the same came to be filed before the Court. In those circumstances, the learned counsel prays for allowing the Revision Petitions.

Sri V. Eswaraiah Chowdary, learned counsel appearing for the respondents opposes the prayers sought for and he would raise

an objection that the so-called agreement of sale dated 02.08.1989 was only a sale letter and that the very suit itself came to be filed in 2008 i.e. after passage of 19 years only to harass the petitioners. Thus contending, he seeks dismissal of the Revisions.

Having considered the material on record, in the light of the facts narrated supra, it is discernible that the petitioners were diligent in bringing the document dated 02.08.1989 on record by moving one Application or the other. Though the respondents say that the document has no evidentiary value, but the fact remains that the said aspect requires adjudication at the hands of the Court. It is not in dispute that the agreement of sale dated 02.08.1989 was listed in O.S.No 234 of 2008, which came to be dismissed for default in 2012 and subsequently, at the instance of the petitioners, the suit was restored to file and they had an opportunity to seek return of the document, which was not marked in O.S.No. 234 of 2008. It is also not in dispute that, as a matter of fact, the said document was made available to the petitioners only on 16.08.2016 and in three days thereafter, I.A.No. 805 of 2016 came to be filed. In those circumstances, the reasons explained by the petitioners for not filing the document on record earlier are justified. In that view of the matter, this Court is of the opinion that the learned Junior Civil Judge erred in dismissing I.A. No. 805 of 2016. Hence, the order dated 07.09.2016 deserves to be set aside. However, since the petitioners have approached the Court almost eight years after the suit was filed, to meet the ends of justice, this Court feels it appropriate to subject the petitioners to certain terms.

C.R.P. No. 4664 is therefore, allowed. Consequently, C.R.P.Nos. 4888, 4889 and 4891 of 2016 are allowed. The order dated 07.09.2016 in I.A.Nos. 802, 803 and 804 of 2016 is also set aside. The petitioners shall pay Rs.5,000/- (Rupees five thousand only) to the respondents in each case within two weeks from today in the Court below. It is made clear that as the suit is at the stage of trial, the Court below shall make every endeavour to complete the entire proceedings within four months from the date of receipt of a copy of this order. No costs.

The miscellaneous Applications, if any shall stand disposed of.

05th December 2016

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CHALLA KODANDA RAM, J

