

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP Nos.1466, 1471 & 1472 of 2016

Date:01.04.2016

Between:

A. Sarojana and another.

... Petitioners.

AND

A. Narayana and others.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP Nos.1466, 1471 & 1472 of 2016

ORDER:

These revisions are filed challenging docket order dated 01-02-2016 in I.A.Nos.377, 378 & 379/2015 in O.S.No.20/2010 on the file of Senior Civil Judge, Medak.

2. Revision petitioners herein are defendants 2 & 3 in the above referred O.S.No.20/2010, which was filed for permanent injunction. After the closure of evidence of both parties and when the suit is at the stage of arguments, plaintiffs filed three applications one to receive a document, second to reopen the case and third to recall P.W.1 for the purpose of marking that document. These three petitions were allowed by the trial Court holding that an opportunity be given to the plaintiffs to mark document filed along with petition by

giving opportunity to opposite side to cross-examine the plaintiffs' witness, if the document is marked. Consequently, the document filed under I.A.No.377/2010 was received. Questioning the orders of the trial Court, three separate revisions are filed against all the three I.As.

3. Heard arguments.

4. Advocate for revision petitioners submitted that as per the plaint, the suit schedule properties are situated at Domadugu Village of Jinnaram Mandal and the proposed document sought to be marked is in respect of properties of Bonthapalli Village in Jinnaram Mandal and they are no way connected to the suit properties and the petitions are filed only to protract the case. He further submitted that the affidavit filed in support of the petitions is silent as to the relevancy of the document so also custody of the document, but the trial Court, without considering the objection raised on behalf of the respondents i.e., revision petitioners herein, allowed the applications only on the ground that no prejudice would be caused to the revision petitioners, therefore, the orders of the trial Court are liable to be set aside.

5. In support of his arguments, he placed reliance on the Judgments in **C. Rama Mohan Reddy v. Kusetty Seshamma and others**^[1], **Vadiraj Naggappa Vernekar (deceased by L.Rs) v. Sharad Chand Prabhakar Gogate**^[2], **Nyayapathi Srinivas Raghavan v. Burra Adinarayana Sastry**^[3] and **Kore Gattaiah v. Kore Venkataiah and others**^[4].

6. On the other hand, Advocate for respondents submitted that after closure of evidence, the gift deed executed was traced as the

relationship is disputed to meet the objection of the revision petitioners with regard to relationship, the document is necessary and the trial Court has rightly permitted the plaintiffs and allowed the applications and that there are no grounds to interfere.

7. Now the point that would arise for my consideration in these revisions is whether docket orders passed by the Court below are legal, proper and correct?

8. **Point:-** Admittedly, the suit was filed for perpetual injunction in respect of 'A' & 'B' schedule properties and 'A' schedule consists of five items and 'B' schedule consists of two items. The main objection of the revision petitioners is that the property covered by document, which is filed along with petitions on behalf of the plaintiffs is nothing to do with the plaint schedule properties, therefore, permitting the plaintiffs to file the said document at a belated stage i.e., at the stage of argument is not permissible.

9. Advocate for petitioners referring to Judgment of this Court in **C. Rama Mohan Reddy v. Kusetty Seshamma and others¹** submitted that this Court held that permitting a party to produce evidence at a belated stage more so, when the party failed to establish relevancy of proposed documents for deciding the suit is not permissible and here as the plaintiffs have not explained the relevancy, the trial Court is not right in permitting the plaintiffs to file the document at a belated stage. As seen from the affidavit filed in support of the application in I.A.No.377/2015, first plaintiff stated in his affidavit that in the last week of September 2015, after closure of his evidence, he could trace the document i.e., registered document dated

14-3-1995, which shows that his father late Rajaiah and the third defendant to the suit has gifted the property mentioned therein to late

Anjamma i.e, mother of first plaintiff and the said document is very important for effective adjudication of the suit to establish the relationship of late Rjaiah with his mother late Anjamma and for this, counter was filed on behalf of the respondents contending that the alleged gift deed is no way relevant for a just decision in the suit and that the petitioners cannot be permitted to produce additional evidence that too when the suit is for injunction simplicitor. The decision relied on by the Advocate for revision petitioners cannot be applied here, because in the affidavit, the first plaintiff has assigned the reasons as to why he could not produce the document earlier and the purpose of the document is to only to prove relationship therefore, the contention that the document is not relevant for deciding the issues has no force.

10. In **Vadiraj Naggappa Vernekar (deceased by L.Rs) v. Sharad Chand Prabhakar Gogate**² Hon'ble Supreme Court held that the provisions under 18 Rule 17 have to be used sparingly and in appropriate cases and as a general rule, a party cannot be allowed to recall or re-examine any witness simply on the ground that it would not cause any prejudice to opposite parties.

11. Here in this case, the recall of plaintiffs was sought only for the purpose of marking the document, which was referred to above to prove the relationship between the parties, which is disputed. Here document is executed by one of the parties to the suit, the objection of the revision petitioners with regard to recall of the witness cannot be sustained and the principle laid down in the Hon'ble Supreme Court decision has no application to the facts of this case, because P.W.1 is not routinely recalled and he was permitted to recall only for specific purpose of proving the document.

12. In the Hon'ble Supreme Court decision, it is also observed that

the party cannot be allowed to fill up lacunas in the case, but here, the recall is only to prove the relationship between the parties through a document which was traced recently therefore, the decision of Supreme Court would no way help the revision petitioners.

13. In **Kore Gattaiah v. Kore Venkataiah and others⁴** and **Nyayapathi Srinivas Raghavan v. Burra Adinarayana Sastry** this Court considered the delay aspect and where no reasons are assigned for not producing the document earlier, it was held that a party cannot be allowed to produce document at a belated stage. But here as already referred above, the plaintiff has stated in Paras 5 & 6 of his affidavit as to how he could secure the document and relevancy of the document for deciding issue.

14. One of the argument of the advocate for revision petitioners is that there is no whisper in the plaint about the present document and the plaintiffs cannot be permitted to fill up lacuna. But as seen from the affidavit of the plaintiffs as the defendants disputed the relationship during course of evidence, it appears the plaintiffs were forced to seek permission of the Court to produce that document only for the limited purpose of proving the relationship. Therefore, these two decisions are also not applicable to the facts of this case.

15. Advocate for revision petitioners also relied on a decision of Hon'ble Supreme Court in **Bagai Construction v. Gupta Building Material Store^[5]** wherein the plaintiff who was in possession of the original bills have not placed them on record and but at that belated stage, he has produced them for which he was not permitted, but here in this case, there is no material to show that plaintiffs are in possession of this gift deed as on the date of filing of the suit and particularly when plaintiffs have stated on oath that they have

recently traced this document i.e., in September 2015, except making a general denial, no specific pleading is taken disputing that fact in the counter. Therefore this decision is also not applicable to the facts of this case.

16. On a scrutiny of the entire material on record, I am of the view that the trial Court rightly permitted the plaintiffs to recall, reopen and produce the document and if the document is not admissible and no relevancy for the issues involved in the suit, nothing prevented the revision petitioners to cross-examine the plaintiffs on those lines and raise necessary objections at the time of marking the document.

17. For these reasons, I am of the view that all the revisions are devoid of merits and therefore dismissed. No costs.

18. As a sequel, miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:01.04.2016

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[\[1\]](#) 2012 (4) ALD 96

[\[2\]](#) AIR 2009 SUPREME COURT 1604

[\[3\]](#) 2012 6 ALD 452

[\[4\]](#) 2015 (6) ALD 581

[\[5\]](#) 2013 (4) ALD 3 (SC)