

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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C.R.P.NO.5470 & 5473 OF 2015

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COMMON ORDER:

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Since parties to the revisions are one and the same and they relate to the same suit, they are being disposed of by a common order.

C.R.P.No.5473 of 2015 is filed by the petitioner/defendant against the order, dt.12.11.2015 passed in I.A.No.1191 of 2015 in O.S.No.390 of 2012 on the file of II Additional Senior Civil Judge, Nandyal, Kurnool District, wherein the application filed by the petitioner/defendant under Order VIII, Rule IA (3) read with Section 151 of C.P.C., praying the court to receive the petition schedule documents by condoning the delay and mark them as exhibits on his behalf was dismissed and C.R.P.No.5470 of 2015 is filed by the petitioner against the order, dt.12.11.2015 passed in I.A.No.1190 of 2015 in O.S.No.390 of 2012 which was filed under Section 38 of Stamp Act and Section 151 of C.P.C., praying the court below to send the partition list dt.12.09.2003 to the Collector or District Registrar for collecting stamp duty and penalty.

The learned counsel for the petitioner herein submits that though the petitioner has given cogent reasons for not filing the original documents in the suit at the time of filing written statement, stating that the petition schedule documents were kept in iron safe and keys of it were with his mother and he has no access to open the iron safe, the court below without considering the same, dismissed the application.

On the other hand, the learned counsel for the respondent/plaintiff submits that chief affidavit of PW-1 is filed on 30.07.2014 and the documents were marked on 20.10.2014 and PW-1 was cross-examined in part on 23.12.2014 and the same was adjourned for

further cross-examination on 20.02.2015. Cross-examination of PW-1 was completed on 15.06.2015 and no suggestion is made to petitioner/defendant about the original documents sought to be received on his behalf. He also submits that already partition took place between the petitioner and the respondent in O.S.No.18 of 1977 and the same was compromised vide I.A.No.180 of 1978 in I.A.No.58 of 1978 on the file of Additional Subordinate Judge Court, Kurnool by virtue of the orders of the said court dt.13.07.1978. As such, there is no merit in the application filed by the petitioner and the trial court after considering the oral and documentary evidence, passed an elaborate order and dismissed the said applications. Therefore, no interference is warranted.

Admittedly, the above said suit is filed in the year 2012 and in the written statement, the petitioner/defendant has stated that photo copies of partition deed, dt.12.09.2003 and 28.10.2003 are filed and originals will be filed at the appropriate time, but no plea is taken by him in the written statement to the effect that the original documents are kept in iron safe, under the lock and key of his mother.

As per counter affidavit filed by the respondent/plaintiff, cross-examination of PW-1 was done with few lines on 23.12.2014 and next cross examination was done on 20.02.2015 and 15.06.2015 and the same was completed on 05.08.2015. In the impugned order it is also stated that after examination of PW-1, PWs.2 and 3 were examined on 05.08.2015 and after closing the plaintiff's evidence, the matter was posted to 07.08.2015, 10.08.2015, 14.08.2015 and later on to 17.08.2015 and subsequently, the present applications are filed by the petitioner.

It has to be seen that the plea taken by the petitioner in I.A.No.1191 of 2015 is not taken in the written statement filed by him in O.S.No.390 of 2012. The trial court after considering the above aspects and after relying on number of judgments rendered by this court came to the conclusion that since the explanation offered by the petitioner/defendant in filing the documents at this stage is not proper,

the delay cannot be condoned for receiving the documents. Since the trial court has considered all these aspects by relying on judgments and came to the right conclusion, the order of the court below does not warrant interference of this court under Article 227 of the Constitution of India.

In view of facts and circumstances of the case, the order dt.12.11.2015 passed in I.A.No.1191 of 2015 in O.S.No.390 of 2012 on the file of II Additional Senior Civil Judge, Nandyal, Kurnool District is confirmed. Since this Court refused to accept the prayer of the petitioner to receive the documents, which are sought to be filed by the petitioner, the question of sending un-registered partition list to the District Collector for collecting stamp duty does not arise. Hence, the order dt.12.11.2015 passed in I.A.No.1190 of 2015 is also confirmed.

The revision petitions are, therefore, dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.25.01.2016

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