

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.589 and 638 of 2016

-

COMMON ORDER

Since these two revisions arise out of one suit and as they are interrelated, this Court deems it appropriate to dispose of these cases by way of this common order.

2. Defendants in O.S.No.24 of 2009 on the file of the Court of the Senior Civil Judge, Hindupur, are the petitioners in these revisions.

3. C.R.P.No.589 of 2016 challenges the order dated 06.01.2016 passed in I.A.No.260 of 2015 in O.S.No.24 of 2009 and C.R.P.No.638 of 2016 assails the order dated 06.01.2016 passed in I.A.No.474 of 2015 in O.S.No.24 of 2009.

4. Respondents herein instituted the suit for partition. In the said suit, defendants/petitioners herein filed the present I.A.Nos.474 and 260 of 2015 under Section 151 CPC and under Order 8 Rule 1-A(3) of the Code of Civil Procedure, praying the Court to reopen the suit to enable the defendants to adduce evidence and to receive the following documents by condoning the delay and to mark the same: (1) original pattadar passbook issued by the Mandal Revenue Officer, Chilamathur.

(2) 07.04.2015- Adangal standing in the name of the first defendant issued by the Mandal Revenue Officer, Chilmathur;

(3) 07.04.2015- Adangal standing in the name of Defendant No.10 issued by the Mandal Revenue Officer, Chilamathur.

5. Plaintiffs/respondents herein filed counters, resisting the

said interlocutory applications. The learned Senior Civil Judge, by way of an order dated 06.01.2016, dismissed I.A.No.260 of 2015 and also dismissed I.A.No.474 of 2015 on the same day as infructuous in view of the order in I.A.No.260 of 2015. The said orders are under challenge in these revisions.

6. Heard Sri N. Ranga Reddy, learned counsel for the petitioners and Sri P. Narahari Babu, learned counsel for the respondents apart from perusing the material available before the Court.

7. It is contended by the learned counsel for the petitioners that the orders under challenge are erroneous, contrary to law and opposed to the very spirit and the object of the provisions of Order 8 Rule 1-A(3) of the Code of Civil Procedure; had the contents of the supporting affidavits been considered, the orders impugned in these revisions would not have emanated; though the reasons for non- filing of documents were shown, the Court below declined to receive the same erroneously; the judgments on which the Court below placed reliance is not relevant to the case on hand; the Court below erred in holding that the petitioners failed to show that in spite of due diligence, the documents could not be produced before commencement of trial. In support of his submissions and contentions, learned counsel for the petitioners places reliance on the judgment of this Court in **N. Premaiah v. Narmala Deva Raj**^[1].

8. On the contrary, it is contended by the learned counsel for the respondents that there is no error nor there is any infirmity in the impugned orders as such the present revisions are liable to be dismissed. It is the further submission of the learned counsel that

in the absence of any patent perversity in the orders impugned, the same are not amenable for any interference of this Court under Article 227 of the Constitution of India. It is also the submission of the learned counsel that since the petitioners herein failed to assign any valid reasons for non-filing of documents along with the written statement, the petitioners herein are not entitled for any indulgence of this Court.

9. Now, the issue that emerges for consideration of this Court is;

Whether the impugned orders are in accordance with the provisions of Order 8 Rule 1-A of the Code of Civil Procedure or whether the same warrant any interference of this Court under Article 227 of the Constitution of India?

10. **Point:**

According to the affidavits filed in support of the interlocutory applications, the suit was posted on 31.03.2015 for defendants' side evidence and due to fever, the first defendant could not attend the Court resulting in closure of evidence by the Court below and the suit was posted for arguments. It is the further case of the petitioners that they got valid defence and the first defendant also filed xerox copy of the pattadar passbook and now filing the original pattadar passbook so also the latest adangals issued by the Tahsildar. In the affidavit filed in support of the application filed under Order 8 Rule 1-A(3) of the Code of Civil Procedure, the petitioners herein stated that as on the date of filing of written statement, original pattadar passbook was required for procuring seeds and manure etc., and as such the same could not be filed in the Court.

11. By way of filing counters, the plaintiffs/respondents herein

resisted the said interlocutory applications, *inter alia*, stating that the plaintiffs' side evidence was closed on 24.07.2014 and the suit was posted for defendants' side evidence on 12.08.2014 and despite the matter underwent a number of adjournments, the defendants did not get ready, even on 31.03.2015, on which date the evidence was closed and the suit was posted for arguments. The defendants in the said counter stated that no documentary evidence was produced in support of the stated illness, and as against the grant of pattadar passbook and title deed in favour of the first defendant, the plaintiff and his two brothers filed appeal before the Revenue Divisional Officer, Penukonda and the first defendant appeared through an Advocate and the Revenue Divisional Officer, Penukonda, passed an order on 06.08.2014, ordering fresh enquiry and suppressing the same, I.A.No.260 of 2015 was filed.

12. Order 8 of Code of Civil Procedure deals with the written statement, set-off and counter-claim. Rule 1 of Order 8 deals with filing of written statement and Rule 1-A inserted by virtue of Act 22 of 2002, which came into effect from 01.07.2002, mandates and imposes obligation on the part of the defendant to file documents along with written statement and as per Rule 1-A(2), if any document is not in his possession, defendant is required to state, wherever it is possible, in whose possession it is. Rule 1-A(3) is a departure to Rule 1-A(1) of Order 8 and as per Rule 1-A(3) " a document which ought to be produced in Court by the defendant under this Rule, but is not so produced shall not, without the leave of the Court, be received in evidence on his behalf in the hearing of the suit".

13. Obviously, the petitioners herein filed I.A.No.260 of 2015

under Order 8 Rule 1-A(3) of the Code of Civil Procedure. The leave, as stipulated under this provision, is not automatic and can neither be sought nor be granted in the absence of good cause and valid reason shown by the applicant. Rule 1-A(2), as stated supra, obligates the defendants to state in whose possession the document is. The information available before this Court vividly discloses that the evidence of the plaintiffs was closed on 24.07.2014 and the present suit is of the year 2009. After undergoing a number of adjournments, which is not in dispute, the suit was eventually posted on 31.03.2015 for defendants' side evidence and even on that date, the defendants failed to adduce evidence which compelled the Court to close the evidence of the defendants and posted for arguments on 08.04.2015. As evident from the material available on record, the petitioners herein filed I.A.No.474 of 2015 in the month of December, 2015 i.e., after the suit underwent 7 adjournments even after posting the same for arguments. A perusal of the orders under challenge clearly reveals that the learned Senior Civil Judge took into consideration all these aspects including the delay in filing the application. Except mentioning in the affidavit filed in support of the application i.e., I.A.No.474 of 2015, that D1 was suffering from fever, no other reason was assigned nor any medical certificate was produced in support thereof. In fact, all these aspects were categorically discussed by the Senior Civil Judge in the impugned orders and recorded a finding that the defendants filed these applications only to drag on the proceedings and to prevent the quick disposal of the matters.

14. In the facts and circumstances of the case, the judgment of this Court reported in **N. Premaiah's** case (1 supra), which is

sought to be pressed into service by the learned counsel for the petitioners, would not render any assistance to this case. It is also required to be noted that in the affidavit filed in support of the application in I.A.No.260 of 2015, the petitioners herein did not assign any proper reasons. In the context, it would be appropriate to refer to the judgment of this Court in **Voruganti Narayana Rao v. Bodla Rammurthy**^[2] and this Court at paragraphs 7 to 9 held as under;

“7.Rules 1-A and 1-A(3) of Order VIII C.P.C., were substituted by Act 46 of 1999 with effect from 01.07.2002. The object with which those Rules were amended was to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the civil Court. The Parliament has thought it fit to stipulate time limits for the parties to file their defence and produce the documents along with the defence so that the cases can be disposed of without avoidable delays. This being the avowed object with which the above noted provisions are amended, Rule 1-A(3) of Order VIII C.P.C., which on a literal interpretation appears to vest unlimited discretion with the Court, requires to be interpreted so as to advance the intendment of the legislation. The Court before which the defendant produced the said documents after filing of the written statement, therefore, needs to be circumspect in examining whether proper reasons are assigned by the defendant for not producing the documents along with the written statement. Unless the reasons assigned by the defendant discloses sufficient cause for his failure to produce the documents within the time stipulated in Rule 1- A of Order VIII C.P.C., the Court shall not permit the defendant to file such documents later. Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended. This Court in **Ravi Satish** (cited supra) held that grant of leave by the Court is not for the mere asking nor is the Court a mere post-office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the written statement.

8.In his affidavit, respondent No.3 stated that they could not file the documents earlier even though they were confronted to the witnesses immediately after they were traced.

9.In the first place, there is no specific plea by the

respondents that those documents were misplaced. The respondents have not also pleaded that despite their due diligence, the documents could not be traced. They have also not stated as to when the documents were traced. Even assuming that those documents were misplaced, it is the admitted case that those documents were confronted to P.W-1 during his cross-examination on 11.02.2011. After closure of evidence on the plaintiff's side, respondent No.3, who is defendant No.3, has filed his affidavit in lieu of his chief-examination on 22.03.2011. The respondents have leisurely filed the I.A. for receiving the documents much thereafter i.e., on 08.04.2011. If the respondents' plea that the documents could not be traced was correct, nothing prevented them from filing the application either before or at least at the time when those documents were confronted to P.W-1 on 11.02.2011. From these admitted facts, I am of the opinion that the respondents failed to furnish proper and sufficient reasons for receiving the documents at a far too belated stage. The Court below has, therefore, committed a serious error in failing to notice these glaring shortcomings in the case of respondents and holding that the reasons given by the respondents for belated production of the documents are adequate.

In view of the above reasons and having regard to the principle laid down in the above referred judgment, this Court is not inclined to meddle with the orders passed by the learned Senior Civil Judge, which are impugned in the present revisions, in exercise of the powers conferred under Article 227 of the Constitution of India. It is also a settled law that unless the orders impugned are patently perverse and suffer from jurisdictional errors, the invocation of Article 227 of the Constitution of India is impermissible and this Court does not find any such perversity in the impugned orders.

15. For the aforesaid reasons, the Civil Revision Petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these revisions shall stand dismissed.

A.V.SESHA SAI

8th July, 2016
sj

[\[1\]](#) 2015 (4) ALT 729
[\[2\]](#) 2011(6) ALD 142