

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.669, 800 and 993 of 2015

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COMMON ORDER:

All these three revisions under Article 227 of the Constitution of India are directed by the 2nd defendant against the common order dated 28.01.2015 of the learned Principal Junior Civil Judge at Tiruvur passed in I.A.Nos.388, 389 & 390 of 2014 in OS.no.34 of 2008 respectively filed to (i) re-open the evidence on the side of the plaintiffs; (ii) recall PW1 for further cross-examination; and (iii) grant leave to the petitioner/2nd defendant to file documents mentioned in the petition list.

2. I have heard the submissions of the learned counsel for the revision petitioner/2nd defendant ('the 2nd defendant', for brevity) and the learned counsel for the respondents 1 and 2/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. The case of the 2nd defendant, in support of her request in the three applications, in brief, is this:

The first plaintiff is her elder sister; the second plaintiff is her younger sister; and, the first defendant is their elder brother. The plaintiffs as well as the 1st defendant are aware that their mother Lakshmamma executed a Will on 09.01.1987 in a sound and disposing state of mind bequeathing the plaint schedule property and that the said Will, scribed by P.S.R. Nageswara Rao, was attested by their father and one Viswanadhuni Nagachary. Their mother died on 24.01.1987. Thereafter the Will executed by her mother came into force and was acted upon. By the time the suit came up for trial, the two attestors of the Will had passed away. As such, she had got examined the scribe of the said Will. The 1st defendant is the person behind the litigation; and, he had got filed the suit in the names of the other sisters. The 1st defendant is well aware about the execution of the Will by the mother where

under properties were bequeathed in favour of the 2nd defendant and her children. The 1st defendant had hatched a plan and got fabricated a promissory note for Rs.3,50,000/- in the name of one Chilakalpudi Srinivasarao showing as if the said promissory note was executed by him and his father and got filed a suit-OS.no.119 of 2007 on the file of the Senior Civil Judge's Court, Bhimavaram. The father had contested the suit by filing a written statement stating that the suit pro-note is fabricated by forging his signature; he had also taken a plea that his son, that is, the 1st defendant herein, who is the 2nd defendant therein is the person responsible for the filing of the said suit in the name of the plaintiff therein. During the pendency of the said suit, the father died on 07.09.2007. His legal heirs, that is, the 2nd defendant herein and the other sisters were not brought on record. The 1st defendant had failed to attend the Court and allowed the said suit to be decreed *ex parte* on 17.07.2008. When PW1 was cross examined on behalf of this defendant, all these points were not put to her. PW1 is also not cross examined on the aspect 'that the suit in OS.no.119 of 2007 and this suit were prepared at Bhimavaram by the 1st defendant herein through his advocates and as such, in the first two lines of page 4 in the plaint it is typed "in leave of Court Rs.--- the same is deposited in State Bank of India, Bhimavaram under a/c.no..... on12-2007". Similarly in the declaration given by the plaintiffs, the station name is also typed as "Bhimavaram" and the date as "...12/2007". The plaints in the instant suit and the other suit OS.no.119 of 2007 were prepared at Bhimavaram under the guidelines of the 1st defendant. The 1st plaintiff is a resident of Kambhampadu and the 2nd plaintiff is a resident of Mylavaram. As such, there was no need for them to go to Bhimavaram to have the plaint prepared. The 1st defendant is the person behind the institution of the instant suit and the suit OS.no.119 of 2007. He had got the suits instituted with an ulterior goal of knocking away the property covered by the Will executed by the mother and also the property conveyed by the father in her name and in the name of her children. By the time PW1 was cross-examined on behalf of this defendant, the documents proposed to be filed are

held up with the advocate, who was engaged by the father, at Bhimavaram. As such, she could not file those documents earlier. Thus, the delay in filing the documents had occasioned for *bona fide* reasons. Hence, these three petitions are filed.

4. The case of the plaintiffs, in brief, is this:

The averments in the affidavits of the 2nd defendant filed in support of the petitions are false. The plaintiffs and the 2nd defendant in the instant suit are not parties to the suit-OS.no.119 of 2007. Therefore, the documents being sought to be filed are not concerned with the instant suit. The petitions earlier filed by the 2nd defendant viz., IA.nos.248, 249 and 250 of 2014 were dismissed. The present petitions are hit by the provision under Section 11 of the Code. The suit was filed in March, 2008; and, PW1 was cross-examined on 31.10.2011 and the evidence of both the sides was closed by the Court. Further, PW1 denied the execution of the Will in her cross-examination. The petitions are filed belatedly to fill up the lacunae in the evidence. The 2nd defendant has no right to file the documents related to a suit, which is in no way concerned to the instant suit and also to the parties to the instant suit. The petitions may be dismissed.

5. On merits, the trial Court had dismissed all the petitions by the orders impugned in these revisions.

6. The learned counsel for the parties made submissions in line with the respective contentions of the parties, which are stated supra.

7. The further contentions of the learned counsel for the 2nd defendant are as follows: 'The learned Judge ought to have seen that the documents sought to be produced are the certified copies of Court record, that is, plaint, written statement and judgment in OS.no.119 of 2007 and the same are material and crucial documents for proper adjudication of the present suit. The learned Judge ought to have seen that the Court has got power to receive the documents at any stage subject to proof and relevancy. The Court below, in the interests of justice, ought to have considered the

explanation offered to condone the delay in receiving the documents. The learned Judge ought to have seen that in the written statement of the 2nd defendant, it is categorically stated that she acquired rights to the property under the Will deed executed by her mother on 09.01.1987 and that she is residing along with the parents since her husband died 27 years back. The same was observed in the judgment passed in OS.no.119 of 2007. As such the documents are crucial for proper adjudication of the present *lis*. The learned Judge ought to have seen that in view of State's bifurcation issue, the lower Court was not regularly functioning for the last two years and as such, there is a delay in obtaining the certified copies from the Court at Bhimavaram and hence, the 2nd defendant could not mark those documents at an earlier appropriate stage.'

7.1 On the contrary, the learned counsel for the plaintiffs, while reiterating the case of the plaintiffs and while supporting the 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 orders in all the applications by exercising the discretion judiciously and that the well-reasoned orders of the Court below do not warrant interference in these revisions.

8. I have bestowed my attention to the facts. I have noted the submissions.

8.1 Be it noted that in a suit for partition, the 2nd defendant, having already filed the office copy of written statement in OS.no.119 of 2007, is now seeking leave to file the further documents viz., served copy of the plaint, the certified copy of the written statement filed by the 1st defendant, the certified copy of the judgment dated 17.07.2008 in OS.no.119 of 2007, the certified copies of the affidavit, petition, schedule and orders passed in IA.no.667 of 2007 in OS.no.119 of 2007 and also the certified copy of the Vakalat filed on behalf of the plaintiff in OS.no.119 of 2007. Admittedly, except the plaint copy, which is said to have been served through Court, all the other documents now being

sought to be filed are the certified copies of pleadings and judgment, vakalat and an order passed in the former suit. In the affidavit, the 2nd defendant has given reasons as to why the said documents could not be filed earlier. In the well considered view of this Court, the explanation offered and the cause shown in the affidavit of the 2nd defendant are sufficient to come to a safe conclusion that adequate reasons are assigned and sufficient cause is shown in support of the request for receiving the documents on file by condoning the delay and granting leave. Except stating that there is delay and that the documents sought to be produced are not concerned in any way to the instant suit, no tenable objection is raised by the plaintiffs. The law is well settled that the test that is to be applied for examining the sufficiency or otherwise of the explanation for the delay in filing the documents is not as rigorous as the one that is generally applied for examining the sufficiency of the cause for condonation of the delay under Section 5 of the Limitation Act. The said judgment was delivered on 17.07.2008, that is, after the filing of the written statement in this suit. Further, except one document, the copy of which is already filed, the other documents were not in the possession or custody of the 2nd defendant; therefore, after securing the certified copies of the documents from the Court concerned, the 2nd defendant is seeking leave to produce the same. Undoubtedly, there is a delay in production of some of the said documents. 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 there after 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 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*. Under these circumstances, this Court is of the considered view that the trial Court was not justified in refusing to receive the documents by condoning the delay in filing

the same and in not granting leave to file the said documents. Further, in the circumstances stated by the 2nd defendant and in view of the fact that the matter is before the trial Court, this Court is of the well considered view that one more opportunity can be given to the 2nd defendant to cross-examine PW1 on the aspects stated in her affidavit and the allied aspects. In the considered view of this Court, such a course sub serves the ends of justice.

9. For the aforesaid reasons, this Court finds that the orders of the trial Court, which are impugned in the revision petitions warrant interference.

10. In the result, all the revision petitions are allowed and the orders impugned in the revisions are set aside. Accordingly, I.A.Nos.388 and 389 of 2014 in O.S.No.34 of 2008 are allowed. Evidence on the side of the plaintiffs is re-opened and the 2nd defendant is permitted to further cross-examine PW1. IA.no.390 of 2014 is also allowed and leave is granted to the 2nd defendant to file the documents. It is needless to state that the documents are received subject to proof, admissibility and relevancy and that the trial Court shall consider the said aspect at an appropriate stage.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J