

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P. Nos.3013, 3014 and 3015 of 2016

COMMON ORDER:

These three Revisions arise between the same parties out of the same suit. Hence, they are being disposed of by this common order.

2. Heard Sri A.S.C. Bose, learned counsel for petitioner in the three Revisions.

3. The respondent herein filed O.S.No.226 of 2005 on the file of the Senior Civil Judge, Kovur for partition of the plaint schedule properties into three equal shares and for delivery of one such share to her, mesne profits and costs.

4. The suit was filed on 28-10-2005 and the petitioner, who is

3rd respondent in the suit, filed his written statement by 28-02-2006. Issues were settled on 28-03-2006. Evidence on both sides was closed on 09-03-2006. Respondent/plaintiff's arguments were heard on 07-04-2016 and the matter was posted to 12-04-2016 for arguments of the petitioner.

5. On that day, the petitioner filed I.A.No.548 of 2016 under Section 151 of C.P.C. to reopen the matter,

I.A.No.549 of 2016 under Order XVIII Rule 17 C.P.C. to recall D.W.1 to adduce further evidence and I.A.No.665 of 2016 under Order VIII Rule 3 C.P.C. to receive the copy of Village Settlement Fair Adangal of the year 1958 of Bayyanagudem village dt.16-04-2016.

6. In the affidavit in support of these applications, it is stated by petitioner that the suit was posted to that day for hearing, that a crucial document i.e. Village Settlement Fair Adangal of the year 1956 of Bayyanagudem Village, Koyyalagudem Mandal was to be marked, that he could not file the said document along with his deposition, this document is necessary to establish his case, and though burden is on respondent to prove the nature of acquisition of the property, since this information which he has got relates to the nature of acquisition of the property, which is subject matter of Ex.A-2 dt.18-06-1991 filed by respondent, he should be recalled and permitted to produce this evidence.

7. Counter affidavit was filed by respondent to I.A.No.549 of 2016 stating that the cause mentioned by petitioner for seeking reopening of the suit and for recall of D.W.1 is not a good and sufficient cause, that it was only invented to cover up the lapses of D.W.1 and that the

application be dismissed since it has been filed after arguments of respondent were heard.

8. By a common order dt.17-06-2016, the Court below dismissed the three applications. It held that these applications had been filed after hearing the arguments of the respondent only to fill up the *lacuna* in the petitioner's case and therefore they cannot be allowed, once petitioner himself admits that burden is on plaintiff to prove the nature of the property. It relied upon the judgment of this Court in **Neerudu Srinivas Reddy and another Vs. Neerudu Sunanda @ Sunanda Reddy @ Sripathi Sunanda Reddy, rep. by her G.P.A.Neerudu Bharathi Devi**^[1].

9. Challenging the same, these Revisions are filed.

10. Learned counsel for petitioner contended that the order passed by the Court below is vitiated by error in the exercise of the jurisdiction vested in it and it ought to have allowed these applications having regard to the high-stakes involved in the suit. He also contended that the evidence now sought to be adduced by petitioner has a material bearing on the question whether the property is a joint family property or not.

11. From the facts narrated above, it is clear that the suit

is filed on

28-10-2005, evidence of both sides had been closed on 09-03-2016. On 12-04-2016, after the arguments of the respondent were heard on

07-04-2016, these applications are filed. The petitioner, who was a party in the suit from inception, was aware that the issue about the nature of property is one of the issues in the suit and he should have been vigilant and adduced all the relevant evidence in his favour in that regard before his evidence was closed. The suit is pending from 2005 to 2016 and after the respondent/plaintiff's arguments were closed, these applications have been moved by petitioner. The document, which the petitioner now wants to place on record, is copy of Village Settlement Fair Adangal. Nothing prevented the petitioner from obtaining it and filing it when the Court was receiving evidence on his behalf. Petitioner's negligence in doing so cannot be a ground now to show indulgence to him and give him a fresh opportunity to cover up this negligence.

12. Therefore I do not find any error of jurisdiction in the orders passed by the Court below rejecting I.A.Nos.548, 549 and 665 of 2016.

13. Therefore, these Civil Revision Petitions are accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-07-2016

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