

THE HON'BLE SRI JUSTICE S.V.BHATT
CIVIL REVISION PETITION No.3359 of 2016

ORDER:

Heard Mr. C. Ramachandra Raju for revision petitioner and learned Government Pleader for Appeals.

2. The appellant in A.S.No.28 of 2012 is the revision petitioner. The revision is directed the order in I.A.No.1173 of 2015. The revision petitioner filed the said application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure to condone the delay in filing pattadar pass book issued by the second respondent in the name of revision petitioner for Sy.No.135/1 in an extent of Ac.20.42 cents of Pandavagal village and receive these documents as additional evidence. The revision petitioner filed O.S.No.127 of 2006 for declaration of title and perpetual injunction against the respondents herein. On 01.03.2013, the suit was dismissed. On 05.12.2015, the instant application was filed.

3. The Court below recorded a finding that the document now sought to be filed by revision petitioner is dated 02.03.1990, therefore, it was issued much prior to the filing of the suit. The explanation offered by revision petitioner for condoning the delay and not filing the document in the suit is that the document was misplaced in the house is improbable and unsustainable. The further observation of the lower appellate Court is that if the document is misplaced, the revision petitioner ought to have taken steps for applying to the revenue authority for issue of new pattadar passbook

and ought to have filed these documents. The record does not show that the revision petitioner ever tried to file pattadar passbook all these years when the *lis* is pending. By referring to the requirement of Order 41 Rule 27 (aa) CPC, the prayer is rejected. Hence, the revision.

4. Mr. C. Ramachandra Raju, counsel appearing for petitioner, contends that the findings recorded by the appellate Court are *prima facie* unsustainable. The inadequacy or insufficiency, if any, in the affidavit filed by the revision petitioner cannot and could not be put against the revision petitioner while considering the prayer under Order 41 Rule 27 CPC. According to him, the document now sought to introduced by way of additional evidence is issued by the second respondent and further there is no dispute about the genuineness of these documents and if the prayer is accepted, the respondents would not suffer injustice, prays for setting aside the order impugned and permitting the revision petitioner to place on record subject documents.

5. Learned Government Pleader appearing for respondents places strong reliance upon the findings recorded by the appellate Court and further contends that the chronological consideration of dates and events vis-à-vis the explanation offered by the revision petitioner would go to show that the revision petitioner could not satisfy the requirement of Order 41 Rule 27 (aa) CPC. Unless and until the party brings the case within the ambit of clause (aa) of Rule 27, the applications are not allowed as matter of course. He submits that no exception to the findings recorded by the appellate Court can be taken and after a long drawn litigation for ten years, if the prayer for

additional evidence is accepted and considered, the respondents are put to great injustice and irreparable hardship. Hence, prays for dismissal of the revision.

6. Now the point for consideration is whether the revision petitioner has made out case for condoning delay and permitting him to bring the documents on record by way of additional evidence.

7. Order 41 Rule 27 (aa) CPC reads thus:

27. Production of additional evidence in Appellate Court:-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) ...

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed:

8. The language of clause (aa) makes it clear and provides procedure for introducing additional evidence by a party, who establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not be produced by him at the time when the decree appealed against was passed. The requirement of clause (aa) can be stated as covering three areas. Juxtaposing requirement of clause (aa) of Rule 27, looking at the affidavit filed by the revision petitioner, certainly, this Court is compelled to hold that hardly any one of requirements of clause (aa) of Rule 27 is satisfied by the revision petitioner. The solitary explanation that the documents are misplaced in the house and found

today i.e. on the day the affidavit was filed, cannot be treated as satisfying the requirement of Order 41 Rule 27 (aa) CPC. The opportunity to a party to introduce additional evidence is not similar to the opportunity available to a party before the trial Court. It is because of this reason, conditions are prescribed before the party is permitted to avail the procedural remedy of introducing additional evidence.

9. In the case on hand, there is yet another aspect to be considered. The revision petitioner ought to have taken note of Section 8 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971. Even assuming the entry is made in the pattadar passbook issued, when the title is in dispute before the civil Court, the title is independently considered and decided by the civil Court and for the purposes of I-B register under the Act of 1971, the declaration of civil Court is binding. For the above reasons, keeping in perspective the totality of circumstances, it is held the requirement of clause (aa) of Rule 27 is not satisfied and order impugned is tenable.

The civil revision petition fails and dismissed accordingly. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

August 16, 2016
DSK