

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1195 of 2014

ORDER:

The petitioner is appellant in A.S.No.40 of 2012 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad. She is the defendant in O.S.No.1591 of 2008 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad.

The said suit was filed for eviction of defendant from the suit schedule property and for delivery of vacant possession. The said suit was decreed partly directing the defendant to vacate the suit premises and deliver the suit schedule property within two (2) months from the date of judgment, dated 16-12-2011.

Challenging the judgment and decree the petitioner herein preferred A.S.No.40 of 2012 and the same is pending. In the said appeal the petitioner filed I.A.No.141 of 2013 for receiving certain documents as additional evidence in the appeal. In support of the application the petitioner stated that the date of birth certificate could not be produced before the trial Court as the same was mis-placed and mixed with old papers. The documents were traced on 01-08-2013. A counter was filed to the said application opposing the application. The lower appellate Court dismissed the application by order, dated 20-02-2014 with the following observations:

“As seen from the record, from the beginning it is the case of the petitioner that she was born on 24-07-1954. As claimed by the respondent herein, the petitioner has already produced the similar certificate with the same date of birth. It may be a fact that in the earlier documents, the petitioner was shown to have been born at Nalgonda District and in the proposed document her place of birth is shown as Musheerabad, Hyderabad District. In fact in the earlier suit, the learned Junior Civil Judge, has observed that if the date of birth of the petitioner was treated as 24.07.1954, she was minor as on the date of executing the Sale Deed. However her plea is time barred, since she could not take steps even after obtaining majority. The petitioner

wanted to file another certificate with same date of birth. Therefore there is no necessity to receive the certificate which shows the same date of birth.

11. The other documents are supposed to be the letters received from various Government authorities and petitioner want to file these documents to show that she received these letters while staying in the suit premises. In fact it is not the case of the respondent that the petitioner never resided in the suit premises. Even as per the counter filed by the respondent in the present petition, it has been categorically admitted that the petitioner was allowed to stay in the premises but not as a owner of the premises, but due to relation with the respondent. Therefore these documents may not be a crucial documents and they need not be received at the appellate stage. In addition that the petitioner is not able to explain why she could not produce the documents when she was in possession of those documents even at the time of trial. The explanation offered in the affidavit that the letters were mixed with other old documents cannot be accepted. Therefore, I see no reason to allow the petitioner herein to adduce additional evidence and petition is liable to be dismissed. Hence the point is answered in favour of the respondent and against the petitioner.”

A perusal of the above observations make it clear that the lower Court went into the merits of the case and observed with regard to the relevancy of the documents before disposal of the appeal. Time and again the Hon'ble Supreme Court in several decisions observed that the petition for additional evidence in an appeal should be considered along with the appeal as the Court would be in a better position to appreciate the need for additional documents, if any, on the basis of the over all facts and circumstances of the case.

In circumstances, without going into the merits of the case or the relevancy of the documents, this Court is inclined to set aside the order, dated 20-02-2014 passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.141 of 2013 and remand the said application for being considered along with the pending appeal, in accordance with law.

The Civil Revision Petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the Civil Revision Petition shall stand closed.

A. RAMALINGESWARA RAO, J

February 04, 2016

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THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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