

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.149 of 2012

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Date:24.02.2016

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Between:

Gandasi Santaraju and others.

... Petitioners.

AND

Osuri Sankararao and another.

...Respondents.

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The Court made the following :

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COMMON ORDER:

Both the revisions are preferred questioning common order dated 29-12-2011 in I.A.Nos.353 & 354/2011 in A.S.No.38/2004 on the file of VI Additional District Judge, Fast Track Court, Narasapur.

2. Revision petitioners herein are the appellants before VI Additional District Judge, Fast Track Court, Narsapur, West Godavari District and they filed those two applications one under Order 41 Rule 27 CPC to receive additional evidence and the other under Section 45 of the Indian Evidence Act to send Ex.A6 to hand writing expert for comparison. Both these applications were dismissed by the Court below considering the objections of the other side. Aggrieved by the same, present revisions are preferred on the ground that lower appellate Court has not properly appreciated the material and failed to give opportunity to the revision petitioners to send the documents to an hand writing expert and also to produce additional evidence filed along with I.A.No.353/2011.
3. Heard both sides.
4. Advocate for revision petitioners submitted that the reasoning given by the Court below is not correct and it failed to see the difference between Order 41 Rule 27 (1) CPC and sub rule (aa) & sub rule (b). He further submitted that the observation of the lower Court with regard to extent of plaint schedule property is erroneous in view of the recitals in Ex.A1-agreement of sale. He further submitted that an opportunity may be given to the revision petitioners by directing the Court below to again consider the additional evidence application.
5. On the other hand, Advocate for respondents submitted that the Court below has taken up Order 41 Rule 27 application only on the request of the revision petitioners herein and now they cannot blame the Court. He further submitted that the Court below has rightly dismissed the applications as the revision petitioners failed to explain the delay and also the relevancy. He further submitted that there is no plea with regard to these documents before the trial

Court and no steps are taken during trial of the suit to send Ex.A6 to the hand writing expert and now at appellate stage, they cannot be permitted and the trial Court has rightly dismissed the applications and that there are no grounds to interfere.

6. Now the point that would arise for my consideration in these revisions is whether the orders of the Court below are legal, proper and correct?

7. **Point:-** The suit was filed for specific performance of agreement of sale dated 12-05-1980 marked as Ex.A1 and another agreement of sale dated 04-06-1983 marked as Ex.A3. Trial Court, on a consideration of oral and documentary evidence of both parties, refused to grant the relief of specific performance, but granted alternative relief of refund of money. The revision petitioners herein, who are the plaintiffs preferred appeal aggrieved by the alternative relief granted by the trial Court. In the appeal, they filed I.A.No.353/2011 to receive one document which is a registered partition deed dated 30-8-1973 in order to show the actual extent possessed by the executant of the agreement i.e., first respondent herein. Though, it is a registered document, there was no plea about this document in the plaint and during trial also, nothing was stated in the evidence about this document and only at the stage of appeal, they filed this application. As seen from the order, the application was filed only when the Court insisted for disposal of the appeal being a old one. Along with additional evidence application, plaintiffs also filed an application under Section 45 of the Evidence Act to send Ex.A6 to an hand writing expert. According to plaintiffs, they were under the impression that the trial Court would exercise it's power under Section 73 of the Evidence Act to compare the signature, but as it has not done so, they have filed the said application to send the document to an hand writing expert. If really the intention of the plaintiffs is to see that the document is to be sent to an hand writing expert, they would have filed this application along with the appeal or immediately after filing of the appeal. But the appeal is filed in the year 2004 and this application is filed in the year 2011 i.e., nearly after seven years, that speaks volumes about the plea raised by the plaintiffs that they were under the impression that trial Court would examine the document by exercising powers under Section 73 of the Indian Evidence Act. Lower Court has considered all the contentions and rival contentions of both the parties and rightly dismissed both the applications.

8. Advocate for petitioners submitted that in **Andisamy Chettiar vs. Subburaj Chettiar** (*Civil Appeal No.14055/20*

9. For these reasons, I am of the view that both the revisions are devoid of merits and the same are liable to be dismissed.

10. Accordingly, both the revisions are dismissed. However, the petitioners are entitled to take all the grounds that are available to them under law in the appeal pending before the appellate Court and that the appellate Court shall decide the appeal on merits not being influenced by any of the observations made in this order so also in the impugned order dated 29-12-2011. No costs.

11. As a sequel, miscellaneous petitions, if any, pending in these civil revision petitions, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:24.02.2016

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