

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.2903 AND 2997 OF 2016

C O M M O N O R D E R

The petitioner in these revisions is defendant 1 in O.S.No.99 of 2005 on the file of the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar. He, along with defendants 2, 4 and 9, filed I.A.Nos.2007 and 2008 of 2014 in the said suit to receive additional documents by condoning the delay, if any, and to recall himself as D.W.2, for adducing further evidence. By separate orders dated 28.04.2015, the trial Court dismissed both the I.A.s. Hence, these revision petitions.

Heard Sri Vedula Venkataramana, learned senior counsel appearing for M/s. Indus Law Firm, counsel for the petitioner-defendant 1, and Sri B.Vijaysen Reddy, learned counsel for respondent 1-plaintiff.

The suit, O.S.No.99 of 2005, was filed before the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, for partition of the suit schedule properties and for separate possession. Defendants 1, 2 and 3 are the sons of the plaintiff, while defendant 4 is the son of defendant 1. Defendant 9 is the daughter of defendant 2. Defendant 1 was examined in the suit as D.W.2 and was thereafter cross-examined at length by the plaintiff's counsel and also defendant 3's counsel. This cross-examination is stated to have run into 108 pages. In his affidavit filed in support of the subject I.A.No.2008 of 2014, the petitioner-defendant 1 stated that during the course of his cross-examination he was confronted with various documents and questions were posed by the counsel for defendant 3 touching upon the properties covered by Ex.B34 partition deed. He

stated that during the said cross-examination, he did not elaborate on certain factual aspects covering the contents of the said document and that, unless he is given a chance to explain the true character of the document, the ambiguity would remain. He further stated that in his cross-examination, he had said that the Statement of Accounts (Ex.B188) was for the period 01.03.1997 to 10.07.2005, which was factually incorrect as it was only for intermittent periods - 01.03.1997 to 01.01.2000, 01.04.2000 to 30.04.2001 and 01.01.2005 to 08.07.2005. According to him, at that time, some of the facts were not within his knowledge and as such he could not bring out the same in his chief-examination. He therefore wanted to be recalled to depose and to mark the documents which he wanted to bring on record *vide* I.A.No.2007 of 2014. In the affidavit filed in support of I.A.No.2007 of 2014, the petitioner-defendant 1 stated that during his cross-examination by the counsel for the plaintiff, some questions were posed which led to production of certain documents which were brought on record. According to him, the documents which were proposed to be brought on record by way of the I.A. were essential to demolish the oral evidence of the plaintiff's witnesses. These additional documents were stated to be necessary for clearing ambiguity and it was therefore just to condone the delay, if any, in their production and to receive the same.

Perusal of the order passed in this I.A. reflects that the trial Court went into the admissibility of the documents sought to be introduced under Order 8 Rule 1-A(3) CPC. To this extent, the contention of Sri Vedula Venkataramana, learned senior counsel, that the approach of the trial Court was erroneous and misguided has to be accepted. While considering an application under Order 8

Rule 1-A(3) CPC, the trial Court is only expected to examine as to whether sufficient cause has been made out to grant leave to the defendant concerned to file documents which ought to have been produced by him along with the written statement. At such a stage, admissibility or relevance of such documents cannot be looked into.

However, the trial Court also recorded in its orders that the documents which were sought to be filed were within the knowledge of the petitioner-defendant 1 and no reason was put-forth as to why the said documents were not filed along with the written statement itself. More damaging is the finding of the trial Court that the subject documents were sought to be introduced for filling up lacunae. The affidavits filed by the petitioner-defendant 1 in support of both the I.A.s clearly bring out this fact as he admits therein that he wants to demolish the oral evidence of the plaintiff's witnesses. His attempt to be recalled as D.W.2 to adduce further evidence in relation to the documents now sought to be introduced is a step in this regard. This Court therefore finds no reason to interfere with the orders under revision as the purpose of the subject IAs was only to fill gaps in the earlier evidence of D.W.2 and such an exercise cannot be permitted.

The civil revision petitions therefore lack merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

14TH OCTOBER, 2016

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