

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.1943, 1904 and 1903 of 2016

COMMON ORDER:

These three revisions, under Article 227 of the Constitution of India, by the unsuccessful respondents/defendants are directed against the orders, dated 09.03.2016, separately passed in I.A.Nos.86, 87 of 2016 and 257 of 2015 filed by the petitioner/plaintiff in O.S.No.112 of 2010 on the file of the Principal Junior Civil Judge, Huzurabad.

2. I have heard the submissions of *Sri C.Ramesh Sagar*, learned counsel appearing for the petitioners/defendants ('defendants' for brevity), and of *Sri K.Buchi Babu*, learned counsel appearing for the respondent/plaintiff ('plaintiff', for brevity) in C.R.P.Nos.1903 and 1904 of 2016. I have perused the material record.

3. From the pleadings borne out by the record and the submissions made by the learned counsel for the defendants, the following facts are discernable.

In a suit for perpetual injunction brought by the plaintiff against the defendants, the plaintiff filed the afore-stated three applications, I.A.No.86 of 2016 is filed under Section 151 of the Code of Civil Procedure, 1908, ('the Code') requesting to reopen the suit; I.A.No.87 of 2016 is filed under Order XVIII Rule 17 of the Code to recall PW2 for exhibiting the documents and giving further evidence relating to the said documents; and I.A.No.257 of 2015 is filed under Order VII Rule 14(3) of the Code requesting to grant leave to file the documents, namely, copies of pahanies for the years 2010, 2011, 2012, 2013, 2014 and 2015 obtained through 'Mee seva' and receive the same on file by condoning the delay in filing the same. Though the defendants filed detailed counters resisting all the three applications, the trial Court merely passed

cryptic orders and allowed the applications just for the mere asking of the plaintiff. Neither the pleadings of the parties were adverted to nor were reasons, much less valid reasons, assigned for allowing the petitions of the plaintiff.

4. Be it noted that the operative portions of the orders passed in the afore-stated three applications are verbatim as under:

I.A.No.86 of 2016:

Heard. Perused the record.

Having regard to the submissions made by both the counsel and in order to decide the main lis on merits and since I.A.No.257 of 2015 which is filed to receive the documents is allowed today vide separate order, this petition is also accordingly allowed in the interest of justice.

I.A.No.87 of 2016:

Heard. Perused the record.

Having regard to the submissions made by both the counsel and in order to decide the main lis on merits and since I.A.No.257 of 2015 and I.A.86 of 2016 which are filed to receive the documents and to reopen the evidence are allowed today vide separate order, this petition is also accordingly allowed but subject to costs.

I.A.No.257 of 2015:

Heard. Perused the record.

Since the documents are public documents and since no prejudice will be caused to other side as he is entitled to cross examine the witness on the documents marked through him, I am of the view that the petition can be allowed subject to proof and relevancy and admissibility. Accordingly, the petition is allowed subject to proof, relevancy and admissibility. The counsel for the respondents is at liberty to raise all tenable objections at the relevant stage.

5. In this backdrop, the learned counsel for the defendants would further contend that a mere perusal of the orders makes it apparent that the said

orders are unsustainable and hence, the revisions of the defendants may be allowed and the orders impugned may be set aside in the interests of justice.

6. On the other hand, the learned counsel for the plaintiff while supporting the impugned orders of the trial Court would contend as follows: "The suit is filed for perpetual injunction. PW2 is no other than the son of the plaintiff. Since the suit is filed in the year 2010 seeking perpetual injunction, the copy of pahani patrika of the year 2010, that is, the document of the suit year and the pahani patrikas of subsequent years are relevant to establish the case of the plaintiff. The trial Court is of the view that receiving the documents and recalling PW2 & permitting him to mark the documents is necessary for adjudication of the issues settled for determination in the suit. Therefore, the orders are sustainable. The defendants have not even produced the plaint and written statement filed in the suit along with the material papers filed with these revisions. The revisions are devoid of merit and are liable to be dismissed."

7. *In reply*, the learned counsel for the defendants while reiterating the chronology of events and the contentions, which are stated in the counters of the defendants filed in the applications, would submit that in view of the undisputed fact that the suit is filed for perpetual injunction, non-filing of the plaint is not relevant and that the orders, which are unsustainable are liable to be set aside.

8. It is to be noted that the plaintiff who is the mother of PW2 was first partly examined as PW1. However, her evidence taken on record in part was eschewed from consideration as she did not turn up to complete her deposition. Later, she examined her other witnesses, her son, as PW2. Earlier, she filed three applications in I.A.No.257 of 2015, 258 of 2015 and 256 of 2015 seeking to recall her, reopen the suit and receive the documents. Two

applications, which were filed for recalling the plaintiff-PW1 and for reopening the evidence of PW1 were not pressed. However, I.A.No.257 of 2015 filed for receiving the document was pursued. Thereafter, two applications I.A.No.1013 of 2015 and 1012 of 2015 were filed by PW2 to recall him and to reopen the evidence, as if PW2 is a party to the suit. Later, the said applications were withdrawn. I.A.No.257 of 2015 filed for receiving the document remained pending. Thereafter, I.A.Nos.86 and 87 of 2016, which are the subject matters of two revisions before this Court were filed to recall PW2 and to reopen the evidence since I.A.No.257 of 2015 which was filed earlier for receiving the document is already pending before the trial Court. The suit is coming up for hearing arguments.

9. Before proceeding further, it is to be noted that in the application in I.A.No.257 of 2015 filed in support of the request to grant leave to file the documents, the entire affidavit of the plaintiff contains only two following paragraphs and they verbatim read as under:

“1. I am the petitioner herein and defendant in the main suit, hence I am giving this affidavit, as I know the facts of the case.
2. That petitioner/plaintiff filed the above suit. I am herewith filing the original Computerized meeseva pahanies for the years 2010, 2011, 2012, 2013, 2014, 2015, above said documents, and the same is marked as exhibit, in the interest of justice, for which I shall ever pray.”

Thus, the affidavit is bereft of reasons, which are required to be stated while seeking leave to file the documents after the trial has commenced and when the suit is at the advanced stage of hearing arguments. Not even a single reason is stated as to why the plaintiff could not obtain and file the proposed documents at the earliest opportunity. In the other applications, which are filed by the plaintiff for reopening the evidence and for recalling PW2, also no reasons are stated. It is stated that the suit is at the stage of arguments and that due to ill-health, she is not in a position to give evidence and her evidence

is eschewed and in the meanwhile, she filed some important documents along with the petition to receive the documents and that she has got merit in the case and that therefore, it is just and necessary to reopen the evidence and recall her son-PW2 for marking the documents. Thus, for granting reliefs, particularly, the relief viz., granting leave for filing the documents at the stage of arguments, no reasons, much less valid reasons, are assigned by the plaintiff and the petitions are filed in a casual manner without exhibiting any diligence. Noticing that no reasons as are required are assigned in the affidavits of the plaintiff filed in support of the applications, learned counsel for the plaintiff would submit that the plaintiff's learned counsel perhaps should have drafted the pleadings in the matters more carefully. No doubt, when the suit is before the trial Court, the Court is having discretion to grant leave to file the documents in order to give a reasonable, just and fair opportunity to the parties to adduce evidence in support of their pleaded cases. However, such discretion has to be exercised judiciously and if only sufficient reasons are assigned in support of the request and sufficient case is made out for granting the relief. The parties who are not diligent and make requests in a casual manner are not entitled to indulgence of this Court as while exercising the discretion judiciously the Court has to keep in view the interest of both the parties. The trial Court has not adverted to the contentions of the parties and had not assigned any reasons, much less valid reasons, for allowing the applications of the plaintiff. The only observation made for granting leave to file the documents is that if the documents, which are public documents, are received, no prejudice would be caused to the defendants and that the defendants are at liberty to raise all tenable objections at the relevant stage. In the orders passed in the application filed for reopening the evidence, it is stated that since the application to receive the document is allowed, the matter is reopened. In the orders passed in the application to recall the

witness, it is observed that since the applications to receive document and reopen evidence are allowed, vide separate orders, the application to recall PW2 is also allowed. Thus, none of the orders impugned in the revisions are justified and defensible.

10. On the above analysis, this Court finds that there is acceptable merit in the contentions of the defendants that the orders impugned are unsustainable under facts and in law. Viewed thus, this Court finds that these revisions deserve to be allowed in the facts and circumstances of the case.

11. In the result, all the three revisions are allowed. As a sequel, the impugned orders, dated 09.03.2016, passed in I.A.Nos.86, 87 of 2016 and 257 of 2015 are set aside. Consequently, I.A.Nos.86 of 2016, 87 of 2016 and 257 of 2015 in O.S.No.112 of 2010 are dismissed. Since the petitions are being dismissed for not stating valid reasons in the affidavits filed in support of the applications, liberty is reserved to the plaintiff to file fresh applications with valid reasons, if any, for the same reliefs, if the plaintiff desires so to do.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

22.08.2017
RAR

M. SEETHARAMA MURTI, J