

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.1476 of 2017

ORDER:

1) Aggrieved by the order dated 13.02.2017, passed in I.A.No.1292 of 2016 in O.S.No.104 of 2011 on the file of the Senior Civil Judge, Puttur, wherein an application made under Section 151 of C.P.C. praying to re-open the case for the purpose of receiving the documents and mark the same on behalf of the petitioner/plaintiff, was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioner herein filed O.S.No.104 of 2011 seeking partition of the plaint schedule property into five equal shares and to allot two shares to the plaintiff by taking good and bad qualities into consideration by metes and bounds and to deliver separate possession and if the defendants failed to do so, the same may be done through process of law. When the suit was posted for arguments, the petitioner/plaintiff filed I.A.No.1292 of 2016 to re-open the suit for the purpose of receiving the documents and marking the same on behalf of the petitioner. The averments in the affidavit filed in support of the petition would show that the plaint schedule properties are ancestral properties of the petitioner and defendants 1 to 4 and they are in joint

possession and enjoyment of the said properties. To prove the said fact marking of petition schedule documents are very much essential. It is stated that the said documents were misplaced and they have been traced out in her house recently. Hence, she filed an application for re-opening the evidence and another application for receiving the documents by condoning the delay.

3) Respondent No.5 filed counter contending that there are no valid reasons mentioned in the petition and the present petitions are filed only to fill up the latches on the part of the plaintiff. It is also stated that the said documents are not relevant for the present facts of the case. It is also stated that when the matter was posted for arguments, re-opening of the case would lead to causing prejudice to the parties.

4) Respondent No.9 also filed counter contending that by way of these petitions, the plaintiff intends to lead denova trial, for which the respondents have to again submit rebuttal evidence, which would lead to further delay in suit proceedings. It is also stated that once the matter is posted for arguments, it cannot be re-opened and hence prays to dismiss the petition.

5) After considering the arguments advanced, by common order the trial Court dismissed both the petitions. Aggrieved by the same, the present revision petition is filed.

6) Learned counsel for the petitioner would submit that recently the petitioner secured the documents, which are sought

to be received and the said documents are very crucial to prove her case.

7) A perusal of the material placed before the Court would show that the petitioner herein sought for marking of a certified copy of registered sale deed dated 23.09.1977, certified copy of mortgage deeds dated 09.03.1995 and 15.12.2001. The averments in the affidavit filed in support of the petition does not anywhere say as to how the said documents are useful to the case of the petitioner/ plaintiff. Apart from that, the petitioner failed to give any reasons as to why the said documents were not filed along with the suit. The reason now given is that she lost the said documents in the house. It is to be noted here that the suit is of the year 2011 and when the case is posted for arguments, the present application seeking to re-open the suit for the purpose of receiving the documents, came to be filed.

8) In *Ravi Satish v. Edala Durga Prasad*¹ this Court held that grant of leave by the Court for receiving the documents shall not be on mere asking nor is the Court a mere Post-office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the plaint.

9) In view of the judgment referred to above and having regard to the circumstances stated above, I am of the opinion that the petitioner failed to furnish proper and sufficient reasons for re-

¹ (2009) 3 ALT 236

opening the suit for the purpose of receiving the documents at a belated stage.

10) For the aforesaid reasons, the present Civil Revision Petition sans merit and the same is accordingly dismissed. No order as to costs.

11) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

05.07.2017
gkv



JUSTICE C. PRAVEEN KUMAR