

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4644 of 2017

ORDER:

Heard learned counsel appearing for petitioners.

Defendants in O.S.No. 212 of 2007 on the file of Junior Civil Judge, Hindupur are the petitioners in the revision petition filed under Article 227 of the Constitution of India.

The respondents/plaintiffs executed the said suit praying for permanent injunction to restrain the defendants and their followers from interfering with their possession and enjoyment. In the said suit the defendants/petitioners herein filed present I.A.No. 113 of 2017 under the provisions of Section 151 of Code of Civil Procedure to reopen the suit for the purpose of adducing further evidence to mark documents. The said application was resisted by the plaintiffs by way of filing counter. The learned Junior Civil Judge by way of order dated 20th March 2017 dismissed the said application. In this revision the petitioners challenge the validity and legal susceptibility of the said order passed by the learned Junior Civil Judge, Hindupur.

According to learned counsel for the petitioners the order impugned is erroneous, contrary to law and is opposed to the provisions of Order 8 Rule 1 (A) of the Code of Civil Procedure. It is further

submitted that the Court below, without properly appreciating the material available on record including the contents of the affidavit filed in support of the application, grossly erred in dismissing the application. It is also submitted that in the event of application being allowed the same would avoid multiplicity of litigation.

With the above background, now the issue that arises for consideration before this Court is whether the order passed by the learned Junior Civil Judge, dismissing the application is sustainable or whether the same warrants interference under Article 227 of the Constitution of India.

The material available before this Court manifestly discloses that the defendants/petitioners filed the present application after conclusion of the arguments on behalf of the plaintiffs and when the matter was coming up for arguments of the defendants. In the affidavit filed in support of the present application, petitioners herein stated that recently they came to know that the respondents/plaintiffs already sold away the suit schedule properties to some third parties along with others and that the proposed documents are very essential to decide the case of the respondents/plaintiffs.

Rule 1 (A)(i) of Order 8 of Code of Civil Procedure imposes an obligation on defendants to file supporting documents along with the written statement and sub rule (2) of the said Rule also obligates the defendant to state in whose possession or power the document is lying when such is not in his possession. Sub Rule (3) of the said Rule is a slight departure to the said Rule, which enables the defendants to produce documents at a later point of time with the leave of the Court.

In the considered opinion of this Court, the question of granting leave by the Court at later point of time arises only when sufficient reasons are shown by the defendants for not producing the document at earliest point of time. In the instant case, the defendants simply stated that they came to know about the sale of property by the plaintiffs very recently and thereafter secured the certified copies of the registered sale deeds for filing the same into the Court. The Court below recorded a categorical finding that the petitioners/defendants did not plead when they came to know about the execution of sale deeds by respondents/plaintiffs in favour of third parties and that the defendants did not assign any proper reasons to reopen the suit and to recall DW-1. The Court below also observed that the proposed documents are not at all relevant to decide the issue in the suit. Admittedly, in the present case,

after the closure of the evidence, the plaintiffs' advanced their arguments and the matter was coming up for arguments of defendants. If the explanation offered by the petitioners herein is accepted, the same can be the reason in all the cases of this nature. If that being so, the very purpose of insertion of Rule 8 (1) (A) of the Code of Civil Procedure with effect from 1.7.2002 will be frustrated. It is also a settled principle of law that unless the order impugned suffers from jurisdictional error and patent perversity, invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible.

For the aforesaid reasons, this Court does not find such infirmity in the order impugned and accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

A.V. SESA SAI, J

Date: 08.09.2017
KA