

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.6459, 6497 and 6498 of 2016

COMMON ORDER:

The genesis of these three revisions is the common order, dated 14.12.2016, of the learned Junior Civil Judge, Alampur, passed in IA.Nos.273, 274 and 272 of 2016 in OS.No.91 of 2011 filed by the defendants respectively for reopening the evidence, recalling DW1 and summoning the Tahasildar, Manopadu, to give evidence regarding the petition listed documents namely (i) Vangmoolamu (deposition), dated 13.05.2011, of the plaintiff (original); and, (ii) Note file, dated 13.05.2011 (original), which are stated to have been already summoned to the Court by virtue of orders in IA.No.348 of 2012.

2. I have heard the submissions of *Sri Virupaksha Dattatreya Gouda*, learned counsel for the petitioners-defendants, and of *Sri B. Narasimha Sarma*, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendants as arraigned in the suit.

4. Before advertng to the pleadings of the parties in the three interlocutory applications, it is necessary to briefly state the introductory facts, which are as follows:

The plaintiff brought the suit against the defendants for a perpetual injunction in respect of Ac.21.00 guntas of land in Sy.No.11 sub divided as 11/ b, c situate at Rayamakulakumta, Manopad Mandal, Mahabubnagar District, described within the boundaries mentioned in the schedule annexed to the plaint. The defendants are resisting the suit. When the suit is at the stage of arguments, the defendants filed the afore-said three interlocutory applications

seeking the afore-stated reliefs. The said applications were resisted by the plaintiff. On merits and by the common order impugned in these revisions, the trial Court dismissed all the three applications of the defendants. Therefore, the defendants are before this Court.

5. The case of the defendants, in brief, is this: 'The defendants are husband and wife. During the course of trial, they summoned the documents viz., Vangmoolama, dated 13.05.2011 of the plaintiff (original) and note file dated 13.05.2011 (original) to the Court from the Office of Tahasildar, Manopadu. The Tahasildar was also summoned to give evidence. During his examination, two documents, exhibits X1 and X2, were marked and he was cross examined. However, by oversight two more documents afore-stated, which were summoned to the Court as per the orders of the Court in IA.no.348 of 2012, were not got marked through the said witness. The documents are still available on the file of the Court (trial Court). The said omission was noticed at the time of advancing arguments by the counsel for the defendants. Therefore, the delay in filing these three applications has occasioned. Further, during the pendency of the suit, the defendants made a request for furnishing information regarding the death of Rukminamma and also the grounds for deleting the name of C. Devaki and C. Nagamani in the revenue records and including the name of S.V. Basker Reddy, that is, the plaintiff, in the said records and for issuance of pattadar pass books in his name. The said information was sought under the provisions of Right to Information Act. The Tahasildar, Manopadu, furnished the information. The said information obtained from the Tahasildar under the provisions of Right to Information Act, substantiates the defence of the defendants. The said documents were also not marked through DW2 examined on behalf of the defendants, by oversight and mistake. The said documents are also a part of the trial Court record. The same are very relevant and crucial to the defence of the defendants. Hence, it has become necessary to have the evidence reopened, recall DW1 for further

examination and seek issuance of summons to the Tahasildar for his examination before the trial Court for marking the summoned documents, which were omitted to be marked by over sight and mistake.'

6. Per contra, the case of the plaintiff in the counters filed in the applications, in brief, is as follows:

The counsel for the defendants cross examined the Tahasildar at length at the time of marking exhibits X1 and X2. The allegation that by mistake and oversight the other documents were not marked is not correct. The learned counsel for the defendants filed detailed written arguments after verifying all the documents long time back. This plaintiff does not know about the information sought for by the defendants from the Tahasildar under the provisions of Right to Information Act. This plaintiff also does not know whether the information obtained is filed into Court or not and whether or not it is a part of the Court record. The defendants ought to have supplied to the plaintiff, the documents on which they intend to place reliance, before filing the petition for recalling DW1. They did not supply the documents to the plaintiff before seeking to reopen the evidence and to recall DW1. Unless the said documents are supplied, the plaintiff would not be in a position to come to a conclusion as to whether he should concede the request of the defendants or not. As and when the documents are supplied, additional counter would be filed. The petitions may be dismissed.

7. The trial Court dismissed all the applications of the defendants having noted that the suit is at the stage of arguments and that the Tahasildar was already examined as CW1 and that evidence cannot be reopened on the ground that due to mistake and oversight documents could not be marked and that the witnesses cannot be recalled to fill up the lacunae by either of the parties. Aggrieved thereby, the defendants are before this Court.

8. Learned counsel for the defendants while reiterating the case of the defendants and their pleaded defence in the written statement and also the importance of the documents summoned from the Tahasildar's office and the documents that were obtained from the Tahasildar's office under the provisions of Right to Information Act and the bearing the said documents will have on the issues involved in the suit pleads for giving an opportunity to the defendants to further examine DW1 and the Tahasildar to substantiate their defence. He would also submit that in the facts and circumstances of the case, the filing of the said documents is also necessary for effective adjudication of the *lis* and that the said documents would be helpful to the trial Court in objectively, fairly and justly adjudicating the *lis*.

9. Per contra, learned counsel for the plaintiff while reiterating the defence of the plaintiff, which is already stated supra, and while stating that the suit is a simple suit for perpetual injunction and that the Tahasildar was cross examined at length while marking exhibits X1 and X2 and that the defendants failed to give any reasons much less valid reasons for reopening the evidence and recalling DW1 and CW1/Tahasildar forcefully contended that the trial Court was justified in dismissing the petitions and that the defendants are not entitled, at the stage of arguments, to adduce further evidence and fill up the lacunae in the evidence. He had also brought to the notice of the Court that earlier there were directions to dispose of the suit within a time frame and that the defendants suppressed the said fact before this Court.

10. I have bestowed my attention to the facts and submissions. During the course of hearing, the learned counsel for the defendants brought to the notice of this Court the following facts: 'An appeal filed by the plaintiff under Section 5(5) of A.P. Records in Land & Pattedar Pass Books Act, 1971, against the proceedings, dated 21.07.1995, of Mandal Revenue Officer of Manopad Mandal was originally pending on the file of Revenue Divisional Officer, Gadwal. The

said Officer during the course of hearing was of the opinion that the case is a fit case to be sent to Tahasildar, Manopadu, for *de novo* enquiry and to take a fresh decision as per the ROR Act and Rules. Accordingly, on 16.04.2011, the RDO passed the following Order in the proceedings before him: 'This case is fit to send to Tahasildar, Manopad for conducting de novo enquiry and to take n/a as per the ROR Act and rules. Put up draft accordingly'. However, having ignored the said orders, the RDO passed final orders on 16.04.2011 in the said proceedings pending before him ordering as follows: - 'Accordingly, it is ordered that the R.O.R Proceedings No.12/95, 13(B) certificate No.D/2234/95 & 13 C Certificate dt: 21.07.1995, wrongly issued by TAhsildar Manopad and also the later mutation proceedings in respect of Ac.21-00 gts in Sy.No.11 situated i.e., Ramimakulakunta village of Manopad Mandal are set aside herewith.' Thus, the RDO having directed his subordinate to draft an order to send the case for de novo consideration passed a different order on merits on the same day without sending the case for de novo consideration. Even before appeal is filed before the Joint Collector and stay orders could be obtained, on the same day, hasty action was taken by the Tahasildar and the order of the RDO, which according to the defendants is unsustainable, was implemented. However, the Joint Collector, by his orders dated 16.07.2011 in Revision Case No.D1/ 31/ 2011, granted stay orders staying the orders of the RDO, dated 16.04.2011.' Having brought the said events to the notice of this Court the learned counsel for the defendants submitted that the plaintiff now wants to place reliance on such illegally obtained documents and that therefore to bring the true facts before the trial Court it has become necessary to file the present applications.

11. In the above-stated circumstances, the learned counsel for the defendants would also submit that the documents, which the defendants wish to produce and exhibit before the trial Court, assume importance and that if DW1 is not recalled and the Tahasildar is not summoned, they would suffer

serious and irreparable loss. In-fact, the trial Court was also of the view that the documents are relevant for consideration and, therefore, permitted to summon the documents and in-fact the documents which were summoned from a public office are already available on record of the trial Court. Having summoned the documents, the trial court ought not to have refused to give an opportunity to the defendants to mark the documents, which, according to the defendants, could not be marked by oversight and mistake. Be it noted that the said documents were summoned from a public office and their authenticity/genuineness *prima facie* cannot be disputed. Further, the documents obtained from the Tahasildar's office by having resort to the provisions of Right to Information Act are also documents received from a public office and their authenticity/genuineness also cannot *prima facie* be disputed. In the back ground facts of the case, in the considered view of this Court, if the documents are permitted to be exhibited and an opportunity is given to both the sides to adduce necessary evidence on the truthfulness or otherwise and to prove or disprove the contents of the said documents, such course would not only meet the ends of justice but would also help the trial Court in adjudicating the *lis* effectively, fairly and in an objective manner.

12. However, learned counsel appearing for the plaintiff would submit that in the present suit for perpetual injunction, the contentions being raised by the defendants are irrelevant and that the defendants suppressed earlier orders of this Court, dated 18.06.2013, in CRP.No.602 of 2013, whereby this Court while disposing the said civil revision petition directed for expeditious disposal of the suit. In the well considered view of this Court, simply because the disposal of the suit will be delayed by a few weeks if the reliefs are granted, the reliefs to which the defendants are entitled to cannot be denied, more particularly in the light of the facts peculiar to the case and the nature of the documents and the bearing the documents may have on the issues settled for determination in the suit.

13. Having given earnest consideration and having regard to the further fact that the matter is still before the trial Court, this Court finds that the defendants must be given an opportunity to recall the witnesses and mark the documents, which could not be marked by oversight, though summoned from the Tahasildar office; and also the documents, which were obtained from the Tahasildar's Office by invoking the provisions of RTI Act, to substantiate their defence. In the light of the fact that two of the documents are already summoned from a public office and the other documents are obtained from a public office under the provisions of the RTI Act from public office and that they assume importance in the peculiar facts of the case, this Court considers that an opportunity to adduce further evidence on the relevant aspects shall be given to the defendants as except the ground of delay there are no justifiable grounds to deny the reliefs. Further, the documents are likely to be useful to the Court below in deciding the real issues in controversy and in giving a quietus to the dispute once and for all.

14. Viewed thus, this Court finds that the trial Court was not justified in rejecting the requests of the defendants only on the ground that the suit is at the stage of arguments and that the petitions are filed to fill up the lacunae and in ignoring the fact that two of the documents are already summoned from the Tahasildar's office as per the orders of the Court and the other documents are obtained from a public office by invoking the provisions of RTI Act.

15. In the result, the Civil Revision Petitions are allowed and the common order impugned in the revisions is set aside. As a sequel, all the three IAs are allowed.

Miscellaneous petitions, pending if any, in these revisions shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

17.03.2017
vj|