

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3115 of 2016

ORDER:

In this Civil Revision Petition, under Article 227 of the Constitution of India, filed by the petitioners/defendants, the challenge is to the order, dated 22.04.2016, of the learned Junior Civil Judge, Achampet, passed in I.A.No.32 of 2016 in O.S.No.27 of 2008.

2. I have heard the submissions of Sri B.Narasimha Sarma, learned senior counsel appearing for the petitioners/defendants ('defendants', for brevity) and of Sri R.Bhagavanth Reddy, learned counsel for the respondents/plaintiffs ('plaintiffs', for brevity). I have perused the material record.

3. Before proceeding further, it is necessary to state that this CRP was earlier disposed of by this Court, on merits, by order, dated 28.10.2016. However, at that time, the plaintiffs, though served with notices, did not enter appearance and, therefore, the CRP was disposed of *ex parte*. Subsequently, the plaintiffs filed a petition to review the order, dated 28.10.2016, along with a petition for condonation of delay in filing the petition for review. Both the said applications are allowed today by separate orders; and, the earlier order, dated 28.10.2016, passed by this Court in the main revision is recalled and the CRP is restored to file for hearing and disposal afresh.

4. Today, learned counsel for both the sides made submissions.

5. In a suit for declaration and perpetual injunction, the defendants/petitioners, who are resisting the suit, filed the subject application requesting to grant leave to file the petition listed documents viz., (1) Agreement dated 27.07.2009 executed by the plaintiffs in a panchayat, in the presence of elders; (2) C.C. of sale deed bearing No.2933/2009, dated 24.07.2009; (3) C.C. of sale deed bearing No.729/2013, dated 01.03.2013; (4) C.C. of sale deed bearing No.872/1997, dated 25.09.1997; (5) C.C. of sale deed bearing No.3404/2010, dated 16.09.2010; (6) Construction permission, dated 26.07.2014, issued by the Commissioner, Nagarpanchayat, Achampet, with sketch; and, (7) Encumbrance Certificate, dated 18.09.2015, and receive them on file by condoning the delay in filing the same.

6. The case of the defendants in support of their request for receiving the documents on file after granting leave, in brief, is this:

‘They could not file the petition listed documents earlier as the same were misplaced in the house. However, since the same are traced recently, they have filed the subject petition to grant leave to file the same and to receive them on file. The failure to file them earlier is neither wilful nor for wanton reasons. The documents are necessary to prove the case of the defendants. If the said documents are not allowed to be filed, the defendants will be put to serious loss.’

7. The plaintiffs resisted the said request of the defendants by filing a counter. They *inter alia* contended that the said documents are filed belatedly and that the documents except the sale deed bearing document No.872/1997 were brought into existence solely for the purpose of the

suit and that even that sale deed does not contain the seal of the Treasury Office to show as to when it was released and that there is also no signature of the executant on the 1st page of the said document and that no reasons are stated for granting leave to file the documents at a belated stage.

8. The trial Court having adverted to the provision of Order VII Rule 14(3) and Order VIII Rule 1-A of the Code of Civil Procedure, 1908, dismissed the application of the defendants *inter alia* observing that the defendants ought to have filed the documents along with the written statement and that their explanation that the documents, which were misplaced in the house, were traced before they are filed into the Court, cannot be accepted.

9. Learned Senior Counsel for the defendants would submit that documents 2, 3, 4 and 5 are copies of registered sale deeds and that document no. 7 is an encumbrance certificate and that the said documents being copies of the public documents, and the document no. 6 being construction permission issued by the Nagarpanchayat, with sketch, the authenticity of all the said documents cannot be doubted and that at the time of considering the request for receiving the documents on file, the Court need not examine the probative value or the admissibility. He further submits that the 1st document is an agreement executed by the plaintiffs in the presence of elders and that if the documents including the 1st document are allowed to be filed, no prejudice would be caused to the plaintiffs and that all the documents are very essential to substantiate the defence.

10. The learned counsel for the plaintiffs, while drawing the attention of this Court to the contents of paragraph no.9 of the order of the trial Court, which is impugned in this revision, would submit that the trial Court gave adequate reasons for not accepting the explanation offered by the defendants for the delay in filing the documents and for not granting leave to the defendants to file the documents, and that, therefore, the order does not brook interference. He would also submit that the only explanation offered is that the documents were misplaced in the house and the said explanation is untenable.

11. Since the matter is in the trial Court and as all the documents except the 1st and 6th documents are copies of public documents and as even the 6th document is a construction permission with sketch, this Court is of the considered view that the defendants shall be given a fair opportunity to file the documents to substantiate their defence, more particularly when the Court finds that the documents may be relevant to decide the real issue in controversy. Further, a plausible explanation was offered stating that the documents are misplaced in the house and are traced just before filing the same into Court. When the Court is of the considered view that if these documents are also permitted to be placed on record, the trial Court would be in a better position to effectively adjudicate the /is and that such a course would sub-serve the ends of justice, the Court would direct the trial Court to receive the documents and consider their admissibility and probative value at a later stage. In the well considered view of this Court, at the time of considering requests to grant necessary leave and receive documents on file, the Court will

only consider the aspect of delay in filing the documents and the further short question as to whether or not any case is made out for granting leave; but, the Court will not consider the probative value of the documents filed along with the petition. It is settled law that if the documents are found to be relevant to decide the real issue in the controversy and when the Court feels that interests of justice require that the documents may be received, then the court would receive the documents by exercising the judicious discretion and would consider their effect thereafter at a later stage. When such is the settled position and, when the documents are being sought to be produced in the trial court, before the stage of arguments, normally they would be received and an opportunity would be given to prove them and also to adduce rebuttal evidence, if any; and, their relevance and effect would be considered while deciding the issues raised and involved in the suit. Under these circumstances this Court finds that the trial Court is not justified in refusing to receive the documents and in not granting leave by condoning the delay in filing the same. Viewed thus, this Court finds that the order of the Court below brooks interference.

12. In the result, the Civil Revision Petition is allowed. The order dated 22.04.2016, passed by the learned Junior Civil Judge, Achampet, in I.A.No.32 of 2016 in O.S.No.27 of 2008, is set aside and the said Interlocutory Application is allowed and the subject documents are accordingly directed to be received on file subject to proof, relevancy and admissibility. It is needless to observe that the trial Court shall examine the admissibility, if necessary, at the stage, the documents come to be tendered in evidence through a witness and their probative value, if

admitted, at the stage of evaluation of evidence, while deciding the issues raised and involved in the suit.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

28th March, 2017
Bv

M. Seetharama Murthi, J



THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI



28th March, 2017