

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos. 2622 and 2623 of 2017

COMMON ORDER:

These civil revision petitions are arising out of the order dated 21.04.2017 passed in I.A.No.30 of 2017 filed under Section 151 of CPC to reopen the suit for further evidence; and I.A.No.31 of 2017 filed under Order XVIII Rule 17 of CPC to recall PW1 for further evidence, in O.S.No.399 of 2010. The revision petitioners herein are the plaintiffs in the suit in O.S.No.399 of 2010.

2. Brief facts of the case are that the plaintiffs filed a suit for partition and separate possession against the defendants. The evidence of both sides was closed and the matter was coming up for arguments. At that stage, the plaintiffs filed two petitions, one for reopening of evidence, and the other for recall of PW1 for further evidence, to mark certified copy of sale deed and adangal pertaining to suit schedule property. The respondents have filed their counter before the trial Court contending that the plaintiffs have not taken permission for adducing rebuttal evidence and, therefore, they are not entitled for the above reliefs.

3. The trial Court, on consideration of the material on record, placing reliance on the decision in *Nalajala Narasayya v. Nalajala Sitayya and others*¹, and *T. China Panduranga Rao and another v. B.Venkatappaiah and others*², came to the conclusion that the plaintiffs did not reserve their right to adduce rebuttal evidence and therefore, they are not entitled to adduce the rebuttal evidence on their behalf. Aggrieved by the orders passed by the trial Court, these revisions have been preferred.

¹ 1991 (3) ALT 285

² 1986 (1) ALT 490

4. Heard the arguments of learned counsel for the petitioners and respondents.

5. Learned counsel for the petitioners mainly submitted that the suit is filed for partition of the joint family property, and the extent of the property was shown in the plaint as 0.20 cents which stands in the name of the parents of the petitioners, and they have purchased the same in the year 1971 under a registered sale deed. In the registered sale deed, the extent of plaint schedule property was mentioned as 0.23 cents and, to prove the same, the petitioners intended to file the said registered sale deed in their evidence. It is further submitted that since the said document has come to the notice of the petitioners subsequently, they have sought permission of the Court to mark the document. It is further submitted that no prejudice would be caused to the respondents if the document is received in the evidence.

6. The learned counsel for the respondents, placing reliance on the decisions relied on by the trial Court, submitted that the trial Court has rightly come to the conclusion that the petitioners have not reserved their right to adduce rebuttal evidence and, therefore, they are not entitled to re-open the evidence and recall the witness for marking the documents after completion of arguments. The valuable rights of the defendants would be defeated if the plaintiffs are permitted to adduce rebuttal evidence after completion of evidence of both sides and at the stage of arguments.

7. At the outset, it is obvious that the evidence of plaintiffs and defendants have been recorded by the trial Court and the case is coming up for arguments. At this stage, the plaintiffs filed petition to receive the document without reserving their right of rebuttal evidence. The plaintiffs

have not mentioned anything about the existence of the sale deed and about its recitals in their plaint. There is no material on record to show that they have made any reference about the said sale deed in their evidence. The filing of a document subsequent to the completion of the evidence and at the stage of arguments, without reserving their right of rebuttal evidence prejudices the right of the defendant. In the light of catena of decisions referred above, it is obvious that the plaintiffs are not entitled for adducing rebuttal evidence for receiving the documents which are not referred either in the plaint or in their evidence.

8. Therefore, there are no valid grounds to interfere with the findings of the trial Court dismissing the interlocutory applications filed by the plaintiffs-revision petitioners.

9. IN THE RESULT, the civil revision petitions are dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

04th August, 2017

KSM

GUDISEVA SHYAM PRASAD, J

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