

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1327 of 2017

ORDER:

Aggrieved by the dismissal of I.A.No.1763 of 2016 in O.S.No.147 of 2008 by the learned Senior Civil Judge, Proddatur, the plaintiff has come up with this CRP.

2) By the impugned order, the trial Court dismissed the petition filed by the petitioner/plaintiff seeking to reopen his evidence and permit him to examine one Lekkala Rama Chandra Reddy, the scribe of endorsement on suit agreement of sale as PW.4. The trial Court dismissed the petition mainly on the observation that the proposed PW.4—L. Rama Chandra Reddy was not the scribe of suit agreement of sale (Ex.A.1), as the document would show one S.Mahammad Rafi S/o. Allabaksh, was the scribe. The trial Court further observed that plaintiff examined PWs.1 to 3 and reported no further evidence on 10.07.2015 and thereafter the defendants examined DWs.1 to 4 and at that belated stage, the plaintiff filed the petition and hence there were no merits.

3) Heard both sides.

4) Criticising the order of the Court below, learned counsel for petitioner would submit that the trial Court committed a grave error in observing as if the petitioner wrongly mentioned that the proposed PW.4—Lekkala Rama Chandra Reddy was the scribe of suit agreement of sale and on the other hand the scribe of Ex.A.1 was one Mohammad Rafi. He argued that this observation of the trial Court is patently wrong and the petitioner never mentioned that Lekkala Rama Chandra Reddy was the scribe of agreement

of sale. In Para 5 of the plaint itself he clearly mentioned that on 15.04.2008, the plaintiff paid Rs.1,10,000/- to the defendants as part of the sale consideration under an endorsement written on the reverse of the agreement of sale and said endorsement was scribed by one Lekkala Rama Chandra Reddy. In the affidavit filed in support of I.A.No.1763 of 2016 also, the petitioner clearly mentioned that Lekkala Rama Chandra Reddy was the scribe of the payment endorsement dated 15.04.2008. The trial Court misunderstood as if the petitioner mentioned Lekkala Rama Chandra Reddy as the scribe of agreement of sale and dismissed the petition. Since the burden lies on the plaintiff to establish the execution of agreement of sale as well as the payment made under the endorsement dated 15.04.2008, the evidence of said Lekkala Rama Chandra Reddy is very much essential and hence the impugned order may be set aside by allowing the CRP.

5) Per contra, learned counsel for respondents while opposing the petition would submit that the defendants have taken an emphatic plea denying the execution of the agreement as well as the payment of part of sale consideration under the alleged endorsement dated 15.04.2008 in their written statement and having known their plea, the plaintiff ought to have examined Lekkala Rama Chandra Reddy during his evidence but he filed the petition at a belated stage when the defendants evidence was about to be closed. Hence the trial Court rightly dismissed the petition as not maintainable. He relied upon the decision reported in *Sanagala Srinivasulu vs. Ponnampoola Seetharamaiah*¹ to buttress his contention that when the

¹ 2016(5) ALD 656

plaintiff having known the defence of the defendants through the written statement and also having known the type of evidence he has to adduce to establish his case, failed to do so, cannot seek for reopening of the case.

6) The point for determination is:

“Whether there are merits in this CRP to allow?”

7) **POINT**: As observed supra, the trial Court dismissed the petition on two main reasons. Firstly, it observed that one Lekkala Rama Chandra Reddy, the proposed PW.4 was not the scribe of Ex.A.1—agreement of sale but one S. Mohammad Rafi S/o. Allabaksh was the scribe and therefore, the petitioner’s request to examine the Lekkala Rama Chandra Reddy cannot be considered. The second ground on which the petition was dismissed was that same was filed at a belated stage when the matter was coming up for further evidence of defendants, who already examined DWs.1 to 4. The first ground is concerned, it must be said that the trial Court thoroughly faltered. The endorsement on Ex.A.1 would show that on 15.04.2008, the plaintiff paid Rs.1,10,000/- to the defendants as part of the sale consideration and the said endorsement was scribed by one Lekkala Rama Chandra Reddy. In the plaint as well as in I.A.No.1763 of 2016, the plaintiff clearly referred the said Lekkala Rama Chandra Reddy as the scribe of the payment endorsement but not as the scribe of suit agreement of sale. Since his case was clear to that extent, the trial Court ought not to have dismissed the petition on the alleged misquoting of the plaintiff. The plaintiff owes a duty to establish not only the execution of the agreement of sale but also the payment allegedly made by him. Therefore, the evidence of Lekkala Rama

Chandra Reddy is relevant and essential for determination of the issues involved in the suit. Coming to the delay aspect, no doubt the defendants in their written statement denied the very execution of the agreement of sale itself and also the part payment and in that view of the matter, the plaintiff can be said to be well aware of the defence plea and the type of evidence he has to adduce. In the cited decision, the request of the plaintiff for reopening the suit was dismissed due to enormous delay made by the plaintiff in filing the reopening petition after the closure of the defendants' side. In the present case, the matter was coming up for further evidence. No doubt there is some delay in filing the reopening petition by the present petitioner. However, in view of the fact that the evidence of proposed witness is crucial, in the interest of justice, an opportunity can be given, of course by imposing costs.

8) In the result, this CRP is allowed by setting aside the order dated 05.12.2016 in I.A.No.1763 of 2016 in O.S.No.147 of 2008 and consequently I.A.No.1763 of 2016 is allowed and trial Court is directed to reopen the evidence of plaintiff and permit him to examine L.Ramachandra Reddy as PW4 by fixing a date for examination on plaintiff paying costs of Rs.500/- (Rupees five hundred only) to the Mandal Legal Services Authority, Proddatur within two weeks from the date of this order. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.08.2017

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