

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos. 1971 and 2009 of 2017

COMMON ORDER:

1) Since both the Civil Revision Petitions came to be filed against the common order dated 18.01.2017, passed in I.A.Nos.1197 and 1198 of 2016 in O.S.No.129 of 2011 on the file of the Principal Senior Civil Judge, Tirupati, they are disposed of by this common order.

2) Originally, the petitioners herein filed the above suit, for permanent injunction but subsequently it was altered to declaration of title and to remove the superstructures constructed in the suit property. The plaintiffs, who are the brothers, claimed to be in absolute possession and enjoyment of the suit property. It is stated that the ancestors of the plaintiffs dug a well in the suit land and also constructed a water cement tub, which was used for raising crops. It is said that the said well is closed but the said water tub is in existence in the suit land and the suit land is lying vacant for want of water. It is also said that patta of the suit land stands in the name of one Krishna Reddy, who is the father of the plaintiffs. Recognizing possession and enjoyment of the plaintiffs, the revenue authorities issued pattadar pass book in the name of first plaintiff. While things stood thus, the defendants are said to have made superstructures illegally subsequent to filing of the suit in spite of the order of *status quo* being passed by the Court. Since the defendants have no right, interest or title over the property they are liable to remove the structures and deliver vacant possession. Hence, the prayer in the suit which was initially filed for grant of injunction, was sought to be amended for a declaration of title and to remove the structures.

3) A written statement came to be filed disputing the averments made in the plaint. It is denied that the patta of the suit land stands in the name of the father of the plaintiffs. They also denied issuance of pattadar pass book and title deed in the name of the first plaintiff. However, it is admitted that the defendants made superstructures in the suit property but denied that they made them illegally and subsequent to filing of the suit. Even on merits, it is pleaded that the report of surveyor falsifies the plea that the property belongs to the plaintiffs and that they are in possession of the property. Number of circumstances are referred to in the written statement to show that the entries in the revenue records are false and that the suit itself is not maintainable.

4) After examination of PWs.1 and 2, these two I.A.s came to be filed to recall PW.1 for marking of certain documents and to receive three documents namely 1) Registration copy of simple mortgage deed executed by Nasappagari Krishna Reddy in favour of Kuntrapakam LSAMPCS Limited in respect of the suit property, (2) Registration copy of simple mortgage deed executed by the first plaintiff in favour of Kuntrapakam LSAMPCS Limited in respect of the suit property, and (3) certified copy of adangal and F.M.B. related to the suit property. It is stated in the affidavit filed in support of the I.A. that the father of the plaintiffs mortgaged the suit property in favour of Kuntrapakam LSAMPCS Limited under a simple mortgage deed dated 20.07.1981 as security for the loan borrowed from it. After the death of their father, the first plaintiff also mortgaged the suit property in favour of the said Society under a simple mortgage deed dated 20.03.1986. It is stated that recently they have obtained these documents from the Sub-Registrar Office, Tirupati and copy of Adangal and F.M.B. from the

office of the Tahsildar under Right to Information Act. In view of above, it is stated that these documents could not be filed along with plaint.

5) A counter came to be filed opposing the same. The main plea taken in the counter is that there is no plea in the plaint that the father of the plaintiffs and the first plaintiff mortgaged the suit property with Kuntrapakam LSAMPCS. The alleged documents are self serving documents; they do not have any evidentiary value and no purpose will be served even if PW.1 is recalled for marking the said documents. It is said that under the said mortgage deed, no title was pass on to the plaintiffs. The adangal was already marked as Ex.A3, therefore, the proposed document No.3 is not relevant for adjudication of the matter.

6) After considering the rival submissions, the trial Court rejected the said two applications on the ground that when it was not the plea of the plaintiffs in the plaint that the property was mortgaged in favour of Kuntrapakam LSAMPCS and the fact of obtaining loan from the society, the question of producing evidence without pleading cannot be accepted. The other ground is that no explanation is forthcoming as to why the plaintiffs failed to produce the said documents along with the plaint.

7) It is to be noted here that originally the suit was filed for bare injunction and subsequently the same was amended. It is true that the documents were in existence at the time of filing of the suit, but were obtained only recently. The plea taken to prove the title is that the suit property was in the name of the father of the plaintiffs and a loan was obtained from the co-operative society by executing simple

mortgage deed in the year 1981 and after his death, the first plaintiff also executed simple mortgage deed in favour of the society.

8) It is well settled principles of law that in case sufficient cause is shown for filing the documents at the hearing of the suit and/or at the end of the trial, such cause shown should receive a liberal construction so as to advance the cause of substantial justice, more particularly when the documents sought to be filed, in the opinion of the Court, are relevant and may have bearing on the aspects to be taken into consideration for the determination of the real controversy and the principal issue/s involved in the matter/suit. It is needless to say that what constitutes a sufficient cause always depends upon the facts and circumstances of each case.

9) Having regard to the plea taken though there is a delay and since the trial is at the stage of examination of PW.2 and that the defendant's evidence is not yet commenced, no substantial prejudice would be caused to the defendants, if these documents are produced on record, more so, when they get a right to cross-examine the witness on this aspect.

10) In *Bada Bodaiah v. Bada Linga Swamy*¹ a learned Single of this Court while dealing with the issue as to when the documents are sought to be received, held as under:

“ A reading of Rule 1 of Order XIII alone would show that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written statement. The Court has no power to receive the documents produced subsequently. Further, Sub-rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a

¹ (2003) 1 ALD 790

subsequent stage of hearing of the suit. Order XIII Rule 1 and Order VII Rule 14 (3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage.”

11) In *Billa Jagan Mohan Reddy and another v. Billa Sanjeeva Reddy and others*² the Apex Court held as under:

“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 felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate Court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial Court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevant and effect they may have, be considered in deciding the issues arising in the controversy. The High Court also committed the same error in not considering the effect in this behalf in the right perspective.”

12) From the above, it is clear that there is no hard and fast rule that the documents which are not filed along with the plaint cannot be accepted at a later stage. The Court will have to consider certain aspects namely conduct of parties, nature of documents which are sought to be filed and also as to whether those documents would help the Court to adjudicate the suit in a more effective manner etc.

² 1994 (4) SCC 659

13) In *Bhagwati Prasad v. Chandramaul*³ a Constitution Bench of Apex Court held as under:

“10. ...If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.” (emphasis supplied)

14) The said principle was reiterated by the Apex Court in *Ram Sarup Gupta v. Bishun Narain Inter College*⁴.

15) In the instant case, the trial is in progress. PWs.1 and 2 were examined. The amended plaint itself shows that the patta stands in the name of the father of the plaintiffs. Though in so many words it was not pleaded in the plaint but it was specifically stated in the plaint that the patta stands in the name of father of the plaintiffs. In order to

³ AIR 1966 SC 735

⁴ AIR 1987 SC 1242

appreciate the same they intend to bring these documents on record. It is true that the application came to be filed at a belated stage but since the trial is still at the stage of plaintiffs evidence as these documents would help in deciding the case in an effective manner and as no prejudice would be caused to the defendants, if these documents are produced on record, more so, when they get a right to cross-examine the witness on this aspect, both the cases are liable to be allowed.

16) Accordingly, both the Civil Revision Petitions are allowed. There shall be no order as to costs.

17) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

21.07.2017
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JUSTICE C. PRAVEEN KUMAR