

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION Nos. 4536, 4574 and 4611 of 2017

Date : 04.12.2017

CRP No. 4536 of 2017:

Between :

Md Taher Ali S/o Md Sarwar Ali
59 years
R/o 2-2-52, Kishanpura
Hanamakonda, Warangal dist & 2 others

Petitioner

And

Gundala Shobha Rani W/o Srinivasa Rajendra Kumar
42 yrs R/o TRT 52, Labour Colony, Warangal and another

Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION Nos. 4536, 4574 and 4611 of 2017

ORAL ORDER:

Heard learned counsel for petitioners and learned counsel for respondents. Revision petitioners are plaintiffs. Parties are referred as arrayed before the trial Court.

2. Plaintiffs filed O.S. No. 263 of 2009 pending on the file of the I-Additional Senior Civil Judge Court, Warangal, praying to grant permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit plots mentioned in the schedule appended to the suit.

3. In the said suit, defendants filed I A Nos. 119, 120 and 121 of 2017 praying to reopen the suit to consider application to recall DW.1 (Sri Srinivasa Rajendra Kumar) to give further evidence; and to permit the petitioners to file the documents shown in the list therein by condoning the delay, respectively. All these interlocutory applications were heard and by separate orders dated 13.6.2017 they were allowed. Aggrieved thereby, plaintiffs instituted these three revisions.

4. It was contended that during the course of cross examination of defendant no.1, he was confronted with suggestion that pahanies do not show possession over the land belonging to his wife/defendant no.2 in the said survey number. Having regard to this suggestion of the plaintiffs, defendants claim to have obtained copy of the Pahanies and 1-B certificate only recently and they are very relevant to substantiate their contention. According to defendants, unless these documents are introduced, marked and permitted to rely upon by defendants, grave prejudice would be caused to them.

5. According to plaintiffs, the suit was instituted in the year 2009; defendants filed their written statements on 6.9.2009; issues were

settled long back; along with written statement, no proof was filed in support of their claim about possession of the suit schedule properties; and these three interlocutory applications are filed only when the suit is coming up for hearing to fill the gaps noticed in the cross examination of DW.1. That the present petitions are filed only to prolong the litigation.

6 Though trial Court noticed that the suit is at the stage of arguments after closure of evidence, having regard to the plea of the defendants that said documents are obtained only recently, leaned in favour of defendants to reopen the suit and allowed presentation of the documents mentioned in I A No. 121 of 2017.

7.1. Learned counsel for plaintiffs Sri Nandigama Krishna Rao by placing reliance on the decisions in **Ravi Satish Vs Edala Durga Prasad and others¹**, **Union of India, Ministry of Finance, (Formerly Ministry of Disinvestment), rep by its Secretary, New Delhi Vs. Y.S. HI-Tech Secure Print Pvt Ltd, rep by its Managing Director, Hyderabad²**, **Voruganti Narayana Rao Vs. Bodla Rammurthy and others³** and **R.Saraswathi Vs. P Rajamanikyam @ Veeran and others⁴** would contend that the trial Court erred in allowing reopening of the suit for evidence of defendant no.1 and to present the documents at belated stage and the action of defendants is nothing but amounting to filling up the gaps in the evidence and same is not permissible.

7.2. Learned counsel further contended that no reasons are assigned as to why the defendants could not secure the documents earlier; if according to defendants they have been in possession and enjoyment of the suit schedule property, they ought to have obtained the relevant revenue records and ought to have marked the same during the course of recording of their evidence. The reason assigned that during

¹ 2009 (3) ALT 236

² 2010 (3) ALT 104

³ 2011 (6) ALT 299

⁴ 2015 Lawsuit(Hyd) 998

the course of cross examination defendant no.1 was confronted with the evidence of possession, then these documents are obtained, is no ground to reopen the evidence and permit the defendants to present the documents, which they could have easily secured at the time of filing of their written statement or at least at the time of recording of their evidence.

8.1. Per contra, learned counsel for defendants Sri Podila Hari Prasad would submit that in the suit for injunction simplicitor, the issue being possession of suit schedule property, to arrive at correct conclusion on who is in possession, these two documents are necessary, for proper adjudication of the issue and the trial Court rightly granted the prayer sought by defendants and by presentation of subject documents, no prejudice would be caused to the plaintiffs; those documents are sought to be presented in support of the contention of the defendants that they are in possession of the suit schedule properties and revenue records support their stand. According to learned counsel for defendants, defendants could not secure the subject documents earlier as they were never confronted with entries in revenue records with reference to possession.

8.2. Though there is delay in presenting the documents, mere delay in presentation of the documents cannot be a ground to ignore the plea. In support of the said contention, learned counsel for defendants placed reliance on **Bada Bodaiah and another Vs. Bada Lingaswamy and others**⁵, **Rani Kusum (Smt) Vs. Kanchan Devi (Smt) and others**⁶ and **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others**⁷.

9. Briefly noted, according to plaintiffs, they purchased the suit plots in Survey Nos. 533 and 534 of Bheemavaram village from Smt M.Uppalamma as early as in the year 1987-88 through registered sale

⁵ 2003 (1) ALD 790

⁶ (2005) 6 SCC 705

⁷ (2006) 1 SCC 46

deed and ever since they are in possession and enjoyment of the said plots. While so, defendants are interfering and obstructing construction activity on the suit plots.

10. The material on record would disclose that evidence was recorded on behalf of the plaintiffs and defendants and suit is coming up for arguments. At this stage, defendants filed three interlocutory applications, as noted above.

11. As seen from the prayer in the plaint, suit is for grant of bare injunction against interference with peaceful possession and enjoyment of suit schedule plots by defendants. The primary ingredients required to be satisfied by the plaintiffs in support of the prayer is that they have *prima facie* title to the suit schedule properties and proof of possession as on the date of institution of suit. The defendants require to contest the stand of the plaintiffs on the claim of *prima facie* ownership and to disprove the possession as on the date of institution of the suit.

12. It appears, defendants asserted that they are in possession but no document is filed in support of their contention on possession of the suit schedule plots on the date of institution of the suit. By these applications, defendants sought to introduce Pahani and Adangal copies to show that they are in possession and enjoyment and that they are the owners of the property. However, bare perusal of the two documents which defendants sought to introduce, they were issued on 22.1.2017.

13. A party to a suit has to present his evidence at the earliest point of time. It has become routine for parties to introduce new evidence during various stages of the suit. Filing petition after petition by parties to the litigation on one plea or the other is the major impediment in disposal of civil cases expeditiously. Amendments carried out to Order VIII are intended to curb this tendency and to discipline the parties. It is no doubt true that procedural law cannot frustrate process of arriving at

truth but is intended to aid the Court to arrive at just conclusion. *'Procedural law not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice'* (paragraph 14 **S.K.Salim Haji**). At the same time, Supreme Court also observed that, *'no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (see Blyth Vs.Blyth (1996) 1 All ER 524)'*. (paragraph 13 **S.K.Salim Haji**).

14. A party to civil litigation is required to present his evidence at the earliest point of time. After amendment to Civil Procedure Code in the year 2002, once written statement is filed by the defendants, it is not permissible to them to file any additional evidence on their behalf. However, not presenting the evidence along with written statement and seeking to present the evidence at a later stage, perse cannot be a ground to reject the plea. Order VIII Rule 1-A (3) of CPC, vests discretion in the trial Court to allow introduction of new evidence. Sub Rule (3) of Rule 1-A of Order VIII though couched in negative terms, subject to satisfaction of the Court, such plea can be allowed at a later stage. Satisfaction of the Court to accept the plea of a party to the suit to present documents at a later stage depends on the facts of the case, the nature of documents sought to be presented, reasons assigned, genuineness of the claim and the stage of the suit. The trial Court would assess the *bona fides* of the claim and whether such additional evidence would aid in proper adjudication of the suit claim.

15. The scope of Order VIII Rule 1-A (3) of CPC was considered by this Court in **Ravi Satish**. Learned single Judge held as under:

“11. Sub-rule (3) of Rule 1A of Order VIII permits the documents to be received only on leave being granted by the Court. Grant of leave is not for the mere asking, nor is the Court a mere Post-Office to receive documents even in the absence of any reasons being furnished for failure to file the said documents along with the written statement. Admittedly, in the case on hand, no reasons whatsoever have been furnished by the petitioner, let alone adequate cause been shown as to why the documents, which were the subject matter of the application, could not be filed earlier along with the written statement. Having chosen not to give any reasons, it is not open to the petitioner to contend that the Court below should have received the documents, since the petitioner's right could be adversely affected for failure on its part to receive the documents. While it is no doubt true that admissibility and proof of documents are matters which ought not to be gone into at the time of receipt of documents, the fact, however, remains that the leave sought for can only be granted on adequate reasons being furnished justifying failure on the part of the applicant in not filing the documents along with the written statement earlier. The contention that no prejudice can be said to have been caused to the respondent/plaintiff has been rejected by the Court below on the ground that their right to file rejoinder based on the said document had been denied. The Court below has not committed any jurisdictional error nor has its order resulted in such manifest injustice as to necessitate interference by this Court under Article 227 of the Constitution of India. I see no reason to interfere with the discretion exercised by the Court below.”

16. This decision is followed by this Court in all subsequent decisions on this issue. Noticing the object in introducing stringent provisions in CPC, learned single Judge of this Court cautioned the Courts below in **Voruganti Narayana Rao** by observing that the amendments are carried out *‘to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the Civil Court..... Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended’*. (paragraph 7)

17. Thus, it is necessary to consider the reasons assigned by the defendants in support of the prayer to introduce two documents. A brief affidavit is filed wherein paragraph 2 it is stated that on previous date of hearing, defendants side evidence was closed and matter was posted for final arguments in the suit; that during the cross examination of second defendant it was suggested that defendants are not in possession of the suit schedule properties and pahani do not show possession over the land belonging to his wife in Survey No. 533 of Bheemavaram village; that Pahani and 1-B certificate obtained recently are relevant pieces of evidence to substantiate their contention on ownership and possession,

therefore these two documents are sought to be introduced in the suit. The averments are silent as to why such certificates were not obtained earlier and as to why they could not produce Pahani and 1-B certificate along with the written statement or at least during the course of recording of their evidence and these documents only reflect the possession obtaining as on the date of issuance of these documents whereas in a suit for injunction what is relevant is the possession as on the date of institution of the suit. The defendants have not discharged initial burden in not introducing these two documents earlier, allowed the recording of evidence and seeking to file these documents at the stage of oral submissions. In the facts of the case, trial Court erred in granting the leave. In my opinion these two documents issued on 22.1.2017 cannot come to the aid of the trial Court in arriving at the truth. I am therefore of the opinion that orders against which these revisions are filed cannot be sustained.

18. Accordingly, orders dated 13.6.2017 in I A Nos. 119, 120 and 121 of 2017 are set aside and Civil Revision Petitions are allowed. No costs. However, it is made clear that observations made herein are for consideration of these revision petitions and there is no expression of opinion on merits. The trial Court shall proceed to decide the suit uninfluenced by the observations made herein above. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 04-12-2017
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO



CIVIL REVISION PETITION Nos. 4536, 4574 and 4611 of 2017

Date : 4.12.2017

tvk