

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos. 6532 of 2016, 136 and 157 of
2017

COMMON ORDER:

- 1) C.R.P.No.6532 of 2016 is filed, against the order dated 19.12.2016 passed in I.A.No.180 of 2016 in O.S.No.2 of 2013 on the file of the XI Additional District Judge, Piler, wherein an application filed under Section 151 of C.P.C. to re-open the suit to adduce evidence in the light of the documents filed by the plaintiff was allowed.
- 2) C.R.P.No.136 of 2017 is filed, against the order dated 19.12.2016 passed in I.A.No.181 of 2016 in O.S.No.2 of 2013 on the file of the XI Additional District Judge, Piler, wherein an application filed under Order XVIII Rule 17 read with Section 151 of C.P.C. to recall PW.1 to adduce evidence in the light of the documents filed by the plaintiff was allowed.
- 3) C.R.P.No.157 of 2017 is filed, against the order dated 19.12.2016 passed in I.A.No.182 of 2016 in O.S.No.2 of 2013 on the file of the XI Additional District Judge, Piler, wherein an application filed under Order VII Rule 14 read with Section 151 of C.P.C. to condone the delay in filing the documents, was allowed.
- 4) Since the issue involved in all the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

5) Respondent No.1 herein is the plaintiff and petitioners herein are defendant Nos.8 and 9 before the trial Court. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the trial Court.

6) The plaintiff filed O.S.No.2 of 2013, seeking division of Item Nos.1 to 5 of the suit schedule properties into 30 equal shares and to allot ten shares to the plaintiff, to divide Item No.6 of the suit schedule property into two equal shares and to allot one such share to him with metes and bounds by considering the good and bad, fertility of the soil, utility and its value. After closure of evidence of both sides, the plaintiff filed three applications ie. to re-open the suit, recall of PW.1 and to receive the documents by condoning the delay in filing the said application.

7) Defendant Nos.1, 8 and 9 filed counter stating that the petition is liable to be dismissed as the suit was filed in the year 2007 and the entire evidence has been adduced on behalf of both sides. It is stated that the documents sought to be filed by the plaintiff are very much available with him and no suitable explanation is forthcoming to show as to why they were not filed at the earliest.

8) After considering the rival submissions made, the trial Court allowed all the petitions. Challenging the same, the present Civil Revision Petitions are filed.

9) Learned counsel for the petitioners submits that though the documents which are sought to be marked are very much available with the petitioner, he did not chose to file the said documents during the course of trial. He further submits that when the suit is posted for arguments, only to fill up the lacunae and latches in his case, he filed the present petition. He further submits that the plaintiff failed to explain as to how the said documents are necessary in adjudicating the matter.

10) Learned counsel for respondent No.1/plaintiff submits that some of the documents which are now sought to be marked are obtained under Right to Information Act. He further submits that the suit schedule properties are individual properties of plaintiff, first defendant and late M.Kannaiah Chetty and not to M/s. Lakshmi Agencies.

11) 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 subsequent stage of hearing of the

¹ (2003) 1 ALD 790

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.”

12) 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.”

² 1994 (4) SCC 659

13) 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 as to whether those documents would help the Court to adjudicate the suit in a more effective manner etc.

14) A perusal of the material placed before the Court would show that the documents which are now sought to be filed though some are dated long prior to filing of the suit and some later, but most of them were obtained under Right to Information Act and at a later stage. Though the documents are filed at a belated stage but were found to be necessary basing on the evidence adduced during the course of trial. It is to be noted that the defendants have taken long time to conclude their part of evidence and immediately thereafter the present applications came to be filed to dispute the evidence adduced by the defendants. It is also to be noted that no prejudice would be caused to the defendants if the documents are marked since the said documents are mostly public documents. It is to be noted that since an opportunity would be given to the defendants to cross examine the witnesses on these aspects definitely one cannot say that any amount of injustice would be caused to them. As the documents which are sought to be marked are certified copies and some documents are true copies of the originals, definitely the same cannot be kept away at this stage. Having regard to the above, delay by itself

may not be a ground to throw out the evidence. Taking into consideration the facts in issue, the trial Court felt that these documents are necessary for adjudicating the suit in an effective manner.

15) For the aforesaid reasons, All Civil Revision Petitions are dismissed. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.02.2017
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