

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NOS.3818, 3845 AND 3949 OF 2017

DATED:11-08-2017

Between:

Kona Nooka Raju
and another

... Petitioners

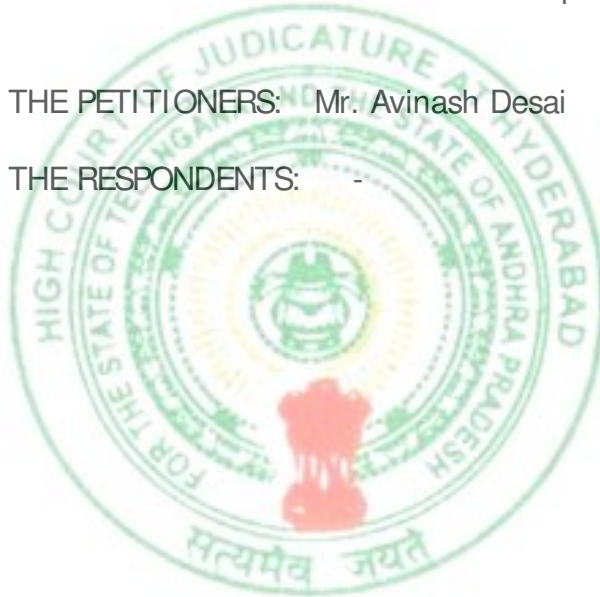
And

Sri Pantangi Vijaya Prasad (Died)
Per Legal Representatives
and others

... Respondents

COUNSEL FOR THE PETITIONERS: Mr. Avinash Desai

COUNSEL FOR THE RESPONDENTS: -



THE COURT MADE THE FOLLOWING:

COMMON ORDER:

Since these three civil revision petitions arise out of a common suit between the same parties, they are heard and being disposed of together.

2. Originally, respondent No.1 filed O.S. No.455 of 2004 before the Court of the Principal District Judge, Visakhapatnam, for cancellation of sale deed dt.22.08.2003 executed by petitioner No.1 in favour of petitioner No.2 and also for consequential reliefs. It appears that the trial Court closed the arguments in the suit in the year 2009. However, due to the death of the plaintiff, the suit continued to be pending. The legal representatives of the original plaintiff, who are brought on record as plaintiff Nos.2 to 8, filed I.A. No.655 of 2017 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) read with Rule 28 of the Civil Rules of Practice for permission to amend the plaint by adding para-III(z) after para-III(y) of the plaint. They have also filed I.A. No.533 of 2017 for reopening of the trial and I.A. No.656 of 2017 for producing certain documents, such as rectification deed and encumbrance certificates. The petitioners - defendants resisted the said applications. However, the Court below allowed the applications - I.A. No.655 of 2017 by separate order dt.1.6.2017 and I.A. Nos.533 and 656 of 2017 by a common order of even date. Feeling aggrieved by these orders, the defendants filed these civil revision petitions.

3. At the hearing, Mr. Avinash Desai, learned counsel for the petitioners, strenuously submitted that the Court below has committed a serious error in allowing the I.As after the arguments were closed. He has further submitted that the pleadings on the strength of which the plaintiffs have filed the applications do not satisfy the requirement of Order VI Rule 17 CPC.

4. While undoubtedly the applications filed by the plaintiffs are far too belated, the ultimate test that requires to be applied by the Court while considering the applications for amendment of the pleadings and production of additional evidence is whether by allowing such applications any loss, which cannot be compensated by awarding costs, is caused to the other side. When this question is put to the learned counsel for the petitioners, he submitted that as his clients have prepared the defence based on the original pleadings and the original documents produced by the plaintiffs, by permitting the plaintiffs to produce additional documentary evidence, his clients' interests will be jeopardized. I am unable to accept this submission of the learned counsel. It is not as if the plaintiffs have been trying to alter the stand taken by them. The purpose for which they want to produce the additional evidence by way of rectification deed and other documents is only to support their plea already taken in the plaint that the property is situated in Sy. No.21/1. The plaintiffs have specifically pleaded in their applications that the main document which was filed in the suit shows that the property is situated in Sy. No.21/2 and that the rectification deed to the sale deed produced by them would show that the survey number has been altered as 21/1. Even it is the case of the petitioners – defendants that the respondents – plaintiffs are not the owners of the properties in Sy. No.21/1. Therefore, in my opinion, by producing the rectification deed, the interests of the petitioners are in no way prejudiced. The respondents would not succeed by merely producing the rectification deed without substantiating their case with reference to the evidence produced by them. In this view of the matter, I am not inclined to interfere with the orders of the lower Court.

5. The learned counsel for the petitioners raised an apprehension that as the rectification deed is sought to be produced and amendment is allowed after closing of the arguments, his clients may not have an opportunity to meet the additional pleadings and documents. To allay this apprehension, the lower Court is directed to permit the petitioners to file additional written statement and also produce additional evidence, if necessary, by fixing a schedule. Since the suit is of the year 2004, the lower Court is directed to dispose of the same as expeditiously as possible, and not later than four months from the date of receipt of a copy of this order.

6. Subject to the above directions, the civil revision petitions are dismissed.

As a sequel to dismissal of the civil revision petitions, C.R.P.M.P. Nos.5028, 5062 and 5190 of 2017 filed in the respective revision petitions shall stand disposed of as infructuous.

11-08-2017

bmr

C.V. NAGARJUNA REDDY, J