

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**Civil Revision Petition No.5815 of 2016**

**ORDER:**

Aggrieved by the docket order dated 20.10.2016 passed in O.S.No.14 of 2011 by the learned V Additional District Judge, Rayachoty, Kadapa District, permitting the defendants in that suit to mark the following documents, the petitioners/plaintiffs preferred the instant C.R.P:

- i) Sale deed dated 07.12.1958.
  - ii) Sale deed dated 26.12.1978.
  - iii) Gift deed dated 24.06.1987.
- 2) Heard arguments of Sri V.R.Reddy Kovvuri, learned counsel for petitioners and Sri D.Kodandarami Reddy, learned counsel for respondents and with their consent, this CRP is disposed of at the admission stage.
- 3) The submission of learned counsel for petitioners is that earlier the defendants filed I.A.No.550 of 2015 seeking permission of the Court to mark as many as '14' documents and the said petition was resisted by the plaintiffs by filing counter and upon hearing both sides, the trial Court passed a speaking order dated 21.09.2015 whereunder the trial Court observed that out of the petition mentioned documents, those documents which were specifically pleaded in the written statement were only permissible to be received subject to proof and relevancy, but other documents which were not specifically pleaded in the written statement

were liable to be rejected. Accordingly, I.A.No.550 of 2015 was allowed by the trial Court on payment of costs of Rs.300/-. Learned counsel would submit that neither party had filed any revision or appeal against the order in I.A.No.550 of 2015 and hence the said order attained finality and thereafter, without there being any petition, the trial Court as per its docket order dated 20.10.2016, all of a sudden permitted the defendants to mark the two sale deeds and one gift deed mentioned supra which were not referred in the written statement by the defendants. Therefore, the said docket order amounts to reviewing its earlier order in I.A.No.550 of 2015. By such permission, any amount of prejudice is caused to the petitioners/plaintiffs and therefore, the said order may be set aside. Learned counsel would submit that the observation made by the trial Court in its earlier order in I.A.No.550 of 2015 was inconsonance with the decision of this High Court in ***Bolla Ajay Babu vs. Nalla Manikyamma***<sup>1</sup> wherein also this Court observed that the trial Court was right in holding that the documents cannot be received in evidence by granting leave in the absence of any reference about them in the pleadings. Learned counsel would submit that basing on the ratio which was also applied by the trial Court in its order in I.A.No.550 of 2015, it ought to have rejected the above mentioned three documents since there was no reference about those documents in the written statement. However, the trial Court erroneously permitted the defendants to adduce them in evidence even without there being any reference about those documents in their written statement.

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<sup>1</sup> 2010 (1) ALD 163

4) Per contra, learned counsel for respondents/defendants would submit that merely because the documents were not referred to in the written statement, that is not a ground to reject them from being marked and the trial Court having considered the importance of those documents for the defendants, permitted them to adduce in evidence and therefore, the impugned order has not suffered any illegality.

5) In the light of above rival arguments, the point for determination is:

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

6) **POINT**: A perusal of the order in I.A.No.550 of 2015 would show that as contended by the learned counsel for petitioners, the trial Court has held that only those documents which were referred in the written statement alone should be permitted to be marked as exhibits on behalf of the petitioners/defendants and those documents about whom no reference was made should not be permitted. The principle applied by the trial Court, is in consonance with the judgment of this Court in ***Bolla Ajay Babu***’s case (1 supra), wherein the learned Judge while approving the decision of the trial Court has held that the Court below was right in holding that the documents cannot be received in evidence by granting leave in the absence of any reference about the same in the pleadings. Learned Judge also reiterated that this Court is also of the opinion that in the absence of any reference to the documents, which are sought to be received in the pleadings, the petitioner cannot seek leave of the Court to receive such documents, at the belated stage, when the suit is coming up

for further evidence on the side of the plaintiff. Therefore, when the documents which according to a party confer a right or cause of action were not referred in the pleadings could not be permitted to be adduced in evidence. So far as I.A.No.550 of 2015 was concerned, the trial Court rightly applied the said principle but strangely it did not apply the same principle in the very same suit when it passed the docket order dated 20.10.2016 and thereby permitted the defendants to adduce in evidence the three documents referred supra. Therefore, the order of the trial Court suffered error.

7) In the result, this Civil Revision Petition is allowed and the impugned docket order dated 20.10.2016 passed by the learned V Additional District Judge, Rayachoty is hereby set aside and consequently, the three documents mentioned earlier in this order are held not to be admitted in evidence on behalf of the defendants in the suit. No costs.

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

**U. DURGA PRASAD RAO, J**

Date: 28.02.2017

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