

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.6085, 6089 & 6107 OF 2017

DATED : 13.12.2017

Between :

Chakilam Ekambaram S/o.(Late) Venkataramanaiah,
Aged about 60 yrs, Occu : Business,
R/o.H.No.12-1-99, Pinnavari Street,
Warangal City/District & another

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Petitioners

And

Venisetty Kamala (Andalu),
W/o.R.B.Markandeya,
Aged about 61 yrs, Occu : Housewife,
R/o.H.No.8-10-5, J.P.N.Road,
Warangal City/District.

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Respondent



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.6085, 6089 & 6107 OF 2017

COMMON ORDER :

Heard learned counsel for the petitioners/defendants and learned counsel for the respondent/plaintiff.

2. Petitioners herein are the defendants in O.S.No.02 of 2005 on the file of I-Additional District Judge, Warangal. After closure of evidence of the plaintiff, the case was posted for defence evidence, from January, 2016 till 04.08.2017. On 04.08.2017 there was no representation on behalf of the defendants and it was passed over and again it was called thrice up to 1.30 p.m. But there was no representation. In view of the same the evidence of defendants was closed.

3. On the same day, petitioners/defendants filed I.A.No.701, 702 & 703 of 2017. I.A.No.701 of 2017 was filed to set aside the order dated 04.08.2017 closing the evidence of defendants. I.A.Nos.702 & 703 of 2017 were filed to recall Dw.1 and to receive the documents for marking. In the affidavit filed in support of the I.As., petitioners claim that while they were cleaning the almirah, they found some old documents which pertain to the transaction that took place between the father of 1st petitioner and some third parties in which signatures of his father were available. He therefore, sought to mark those documents to prove that the signatures found in the Will deed through which the property claimed to have been fallen to him is bequeathed by his father and the signature on the Will is that of his father. This application was

opposed by the plaintiff/respondent. Plaintiff objected for receiving of those documents on the ground that no reasons are assigned as to how these documents are now traced and in whose custody those documents were lying earlier and how did they trace the documents, at this point of time in the suit, more so, when nothing was stated in the written statement nor during the course of cross-examination of plaintiff's witness.

4. Taking note of the history of the case and that no reasonable cause was shown to present the documents at that stage, the trial Court refused to grant the prayer to receive the documents.

5. By separate orders dated 05.10.2017 all the I.As, were dismissed. Aggrieved thereby, these civil revision petitions are filed.

6. As briefly noted, the fact remains that the suit is of the year 2005 and nothing was stated about the documents in the written statement or in the cross-examination. The stand of the petitioners/defendants is that a Will was executed by the father of 1st defendant. It is not explained in the affidavit filed in support of the petition as to how the signatures in those documents are relevant and what is the credibility of those documents. However, having regard to the provision under Order 8 Rule 1(A) of the Code of Civil Procedure, as to when petitioners have discovered these documents and in whose custody those documents were lying earlier was not explained.

7. I.A.No.701 of 2017 was filed to recall Dw.1. In the affidavit filed in support of the prayer it was stated that the deponent appeared before the Court during the call work and the suit was passed over. As the petitioners intended to file some documents,

their advocate prepared two petitions and instructed the deponent to get photocopies of the said petitions and to get the same, he went out and by the time he came back, the suit was called and the defendants evidence was closed. He therefore, submits that it was not deliberate and wilful absence and that he should be recalled.

8. The Court below noted that the defendants have already examined Dws.1 to 5. Petitioners sought time on 27.07.2017 and the matter was posted to 04.08.2017. On that day as the Court noticed that there was no representation on behalf of the defendants, though it was called thrice, the evidence of defendants was closed. As noted above, it appears, the petitioners/defendants wanted to lead further evidence by filing additional documents and to mark those documents. Except for stating that the first petitioner went out to take photo copies of the petitions to be filed no other reason was assigned. It is also not stated as to whether further evidence was sought to be adduced in addition to the prayer to introduce some more documents and to mark them as is sought in I.A.Nos.702 & 703 of 2017.

9. Learned counsel for the petitioners relied on the decision of this Court in ***“M.R.Anjaneyulu Vs R.Subrahmanyam Achary¹***, wherein the Court dealt with the scope of Order VIII Rule 1 (A) of C.P.C., as amended in the year 2002 and observed that discretion can be exercised by the trial Court, to permit the document to be introduced after filing of the written statement.

10. However, a bare look at the facts in last para would show that the case was coming up for cross-examination of the

¹ 2012 (5) ALD 243,

respondent/plaintiff. Therefore, the Court held that documents ought to have been received. There is no dispute about principle of law stated therein. The facts of this case are entirely different from the facts noted by this Court in the said decision. In the facts of this case the said decision do not come to the aid of the petitioners.

11. As petitions were filed on the day when evidence was closed, to reopen the evidence, in the normal circumstances, the prayer could have been granted. However, from the background facts of the case, it is seen that no sufficient cause is shown as to why the evidence of Dw.1 is sought to be reopened, except for the factum of presenting some additional documents and to mark them. Thus, the Court is not inclined to grant the relief as sought for.

12. No justification is made out to reopen the evidence and to receive the documents sought to be introduced and to set aside the order dated 05.10.2017. I do not see any error committed by the Court below warranting interference by this Court. The Civil Revision Petitions are liable to be dismissed.

13. Accordingly, all the Civil Revision Petitions are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these civil revision petitions shall stand closed.

P.NAVEEN RAO,J

13th December, 2017
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