

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5627 of 2017

ORDER:

1) Assailing the order dated 05.10.2017, passed in I.A.No.1239 of 2017 in O.S.No.214 of 2011 on the file of the I Addl. Senior Civil Judge, Rajamahendravaram, wherein an application filed Under Order VIII Rule 1 A(3) and Section 151 of C.P.C to permit him to file documents and receive the same for marking as exhibits on his side, was allowed subject to proof, relevancy and admissibility, the present C.R.P. is filed.

2) The petitioner/plaintiff filed O.S.No.214 of 2011 on the file of I Additional Senior Civil Judge, Rajamahendravaram, for a declaration stating that she is the exclusive owner and possessor of the schedule property and also for a direction to the defendant to deliver vacant possession of the plaint schedule property. A written statement came to be filed disputing the averments made in the plaint. Pending the said suit, I.A.No.1239 of 2017 came to be filed seeking permission to file and receive the documents viz., Unregistered will dated 12.11.2002, certificate dated 22.01.2011 issued by V.R.O., certifying that the schedule property is entered in the name of defendant and attested copy of FIR in Cr.No.15/2011 of Kadiam Police Station, for marking them as exhibits in the interest of

justice. It is his case that as these documents were mis-placed and not traced, he could file the application at an earlier stage.

3) A counter came to be filed opposing the same. It is her case that the documents now proposed to be received were not filed along with the written statement and has no explanation is given as to why the same could not be filed along with written statement. It is further stated that the question of entertaining these documents would not arise after closure of the evidence. Relying upon a judgment of this Court in **Managing Director, APSRTC, Hyderabad and others v. P.V.Surya Narayana**¹ he pleads that the application is liable to be rejected.

4) After hearing both sides, the court below allowed the application to receive the documents subject to its proof and relevancy. Challenging the same, the present C.R.P. is filed.

5) The learned counsel for the petitioner mainly submits that the impugned order does not disclose the reasons as to why these documents are necessary to decide the subject matter in dispute. Since the reasons given for non-filing of the documents along with the written statement though they were in existence by then, the court below erred in entertaining the said application. It is further stated that the application made before the court below does not

¹ 2017(4) ALD 733

anywhere indicate that in spite of due diligence the proposed documents could not be traced and filed.

6) On the other hand, the learned counsel for the respondent would submit that after exercising the discretion only the trial court allowed the petition to receive the documents subject to proof, relevancy and admissibility and there is no illegality or irregularity in the order passed by the trial Court, as such it warrants no interference.

7) As seen from the record, the suit was filed in the year 2011. The written statement came to be filed in the month of July, 2011. All the documents which are sought to be marked are prior to the date of filing of the written statement. No reasons are forthcoming as to why these documents were not filed at the earliest point of time. The only reason which is now made, is that after six years of the date of filing of the suit, the documents which were mis-placed could be traced. Now, the question is "Whether the said reason given in the application can be accepted or not?"

8) Admittedly, the trial in the said suit commenced and the evidence on plaintiff side appears to have been closed. At that stage this application came to be filed. Situation in some what identical to the case of **Managing Director, APSRTC, Hyderabad (one supra)**. It was also a case where a suit was filed for cancellation of gift deed dated 05.11.1998 executed in favour of the defendants. Additional

documents are sought to be brought on record to prove the case of defendants. Relying upon the various judgments cited by both the parties, this Court held that unless the reasons are assigned to disclose sufficient cause of failure to produce the documents within the time stipulated under Rule 1-A(3) of Order VIII, the court should not permit the defendants later. The court held that in the absence of any pleading that despite of due diligence he could not trace-out the documents, rejected the request by confirming the finding given by the trial court.

9) Though the judgment referred to above was brought to the notice of the court, the Court below did not give reasons as to why the documents are necessary for adjudication of the dispute and also as to whether there was due diligence on the part of the petitioner for bringing the documents on record. Hence, the order under challenge is *set aside* and the matter is remanded back to the trial Court to consider the matter afresh by giving reasons.

10) With the above direction, the Civil Revision Petition is disposed of.

11) There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 22.12.2017
GM

