

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.5583 of 2016

ORDER:

The challenge in this CRP at the instance of the petitioner/plaintiff is, the order dated 04.11.2016 in I.A.No.229 of 2016 in O.S.No.109 of 2007 passed by the Junior Civil Judge, Railway Kodur, Kadapa District, whereby, the learned Judge allowed the petition filed by the 1st respondent/6th defendant under Order VIII Rule 1 CPC to mark the petition mentioned documents as exhibits on his behalf.

2) The factual matrix of the case is thus:

a) The petitioner/plaintiff filed O.S.No.109 of 2007 against defendants 1 to 6 seeking perpetual injunction decree in respect of plaint schedule agricultural land of Ac.4-70 cts in Sy.No.252/2. The plaintiff's case is that the Government assigned the suit schedule land to him after detailed enquiry and issued DKT No.163/1291 dated 03.02.1982. He reclaimed the land and planted 300 Mango Trees in the year 1982-83 and enjoying the usufructs. He got dug a bore-well in the suit schedule land in 1984-85 through Andhra Pradesh Irrigation Development Corporation Department (A.P.I.D.C). His further case is that he borrowed agricultural loan on 01.03.1997 from the Raghavarajapuram Primary Agricultural Co-operative Society and the said Society sanctioned registered mortgage loan again to the plaintiff on 27.04.2005 and the plaintiff has been paying regular installments to the 5th defendant

bank. Thus the plaintiff mortgaged the suit schedule property under registered mortgage in favour of PACS, Raghavarajapuram, which is under the control of defendants 4 and 5. The defendants 2 and 3 after detailed enquiry issued pattadar passbook to the plaintiff.

b) The further case of plaintiff is that the 6th defendant who is rich and powerful and relative of Village Revenue Officer, managed the records in the office of defendants 3 and 5 and making a false claim over the suit schedule property and canvassing that he would dispossess the plaintiff from the suit schedule property. Hence, the suit for permanent injunction.

c) The case of 6th defendant is that the plaintiff along with his brother obtained a loan from PAD bank, Kodur by mortgaging the suit property in the year 1985 and later the said Bank merged with District Cooperative Central Bank. As the plaintiff committed default in payment of the loan amount, the DCC bank passed a decree and made a publication for auctioning the suit property. The DCC bank in E.P.No.1475/2001-2002 conducted public auction and the defendant being the highest bidder purchased the suit property and obtained sale certificate and also got possession over the suit property. Since then, he has been in exclusive possession and enjoyment of the suit property with absolute rights. The Revenue Authorities recognised his possession and issued pattadar passbooks in his favour. However, sometime thereafter MRO, Kodur issued resumption notice to the 6th defendant and also to the plaintiff stating that though the land was assigned to the plaintiff, 6th

defendant was in possession. 6th defendant submitted his reply stating that he purchased the property in public auction conducted by the DCC Bank. However, the MRO, Kodur without considering the said aspect, illegally passed an order resuming the suit property. Aggrieved, the 6th defendant filed an appeal before the RDO, Rajampet and the said Revenue Appeal is still pending. Thus, the 6th defendant claimed that he is in legal possession and enjoyment of the suit property but not the plaintiff.

d) While-so, when the trial was proceeding, the 6th defendant filed I.A.No.229 of 2016 under Order VIII Rule 1 CPC seeking permission to produce petition mentioned documents such as

- (i) Certified copy of registered mortgage deed dt.27.12.1985;
- (ii) Original Certificate of sale dated 09.05.2002 issued by the Special Cadre Deputy Registrar/Officer on Special Duty, District Cooperative Bank Ltd., Cuddapah
- (iii) Original DKT patta of the plaintiff dated 03.02.1982;
- (iv) Original DKT Patta of Akula Prabhakar Rao dt.06.01.1982;
- (v) Resume notice dt.28.02.2007 issued by the MRO, Kodur
- (vi) Form No.1 Notice dt.28.02.2007 issued by the MRO, Kodur.

His case is that those documents are very much important to establish his case that he purchased the suit property in a public auction conducted by the DCC Bank, Kadapa and since those documents were misplaced in his house, he could not produce them in time and hence permission may be accorded.

e) The respondent/plaintiff filed counter and opposed the petition *inter alia* contending that the petition was a belated one.

f) The trial Court having considered the importance of the documents to establish the case of the petitioner/6th defendant, overruled the objection of the respondent/plaintiff and allowed the petition.

Hence, the CRP.

3) Heard arguments of Sri J.Sreenivasa Rao, learned counsel for petitioner and Sri Venkat S.K, learned counsel for 1st respondent. Respondents 2 to 6 are not necessary parties in this CRP vide cause title.

4) Fulminating the order, learned counsel for petitioner would argue that, a defendant who relies on documentary evidence shall produce all the documents along with his written statement as per Order VIII Rule 1-A CPC and if he fails to do so, later he cannot be permitted to produce the documents and as per Order VIII Rule 1-A(3) CPC, it is only with the leave of the Court upon his showing sufficient reasons, the documents can be permitted. In the instant case, learned counsel would argue, the respondent/6th defendant submitted different untenable reasons for not producing the documents in time. In the written statement he mentioned as if all the documents were produced by him before the RDO, Rajampet, before whom he allegedly preferred the Revenue Appeal; whereas in the affidavit filed in I.A.No.229 of 2016, he altogether gave a different reason stating that the documents were misplaced in his house and hence the same could not be filed in time.

Learned counsel argued that in view of the contradictory and inconsistent reasons given by him at different stages, the trial Court ought to have disbelieved his version and dismissed the petition but erroneously allowed the petition. He relied upon the following decisions on the principle that Court shall not permit a party to produce documents at a belated stage without showing sufficient reasons.

- (i) *Ravi Satish vs. Edala Durga Prasad and others*¹
- (ii) *Union of India vs. Y.S.Hi-Tech Security Print Pvt. Ltd, Hyderabad*²
- (iii) *Voruganti Narayana Rao vs. Bodla Rammurthy and others*³
- (iv) *R.Saraswathi vs. P.Rajamanikyam @ Veeran and others*⁴

He thus prayed to allow the CPR and set aside the impugned order.

5) Per contra, learned counsel for 1st respondent/6th defendant would submit that there was no inconsistency in the explanation offered by him for delay in his written statement and counter. He would submit that petition mentioned documents 2 to 4 were submitted before the RDO and hence in the written statement he mentioned as if the documents were filed before the RDO and he would produce them at the trial. Whereas documents 5 and 6 were misplaced in his house and therefore, he mentioned in his affidavit to that effect and in fact he obtained copies of documents 5 and 6 from the Revenue Department but in the meanwhile, originals could be traced out and in this backdrop, there

¹ 2009(3) ALT 236

² 2010(6) ALD 430

³ 2011(6) ALD 142

⁴ 2015(5) ALT 527

were no different versions for the delay as mentioned in the written statement and affidavit. Above all, the documents were crucial to establish the fact that he purchased the suit schedule property in the public auction and considering this fact, the trial Court exercised the discretion in his favour and granted leave and there was no jurisdictional error committed by the trial Court. He relied upon the decision reported in *M.R.Anjaneyulu S/o.Ramappa vs. R.Subramanyam Achary S/o.Rajachari*⁵ to canvass the point that no hard and fast principle can be laid down for the Courts as to how the discretion under Order VIII Rule 1-A(3) CPC has to be exercised; but while exercising such discretion, the Courts have to broadly consider relevant aspects such as the conduct of the parties, the nature of documents that are sought to be filed and whether such documents if permitted will help Court to adjudicate the suit in a more effective manner. He submitted that in the instant case, the trial Court has comprehensively considered all the above aspects. He thus prayed to dismiss the CRP.

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

“Whether there are merits in the CRP to allow?”

7) **POINT**: As stated supra, the 1st respondent/6th defendant sought permission to produce six documents at the stage when his evidence was proceeding. As per Order VIII Rule 1-A CPC, a defendant who bases his case on documents shall produce them in the Court along with his

⁵ 2012 Law Suit (AP) 86

written statement, failing which he will be debarred from producing the same at a later stage except with the leave of the Court. The catena of decisions cited by the petitioner referred supra reiterate this aspect and state that sufficient reasons have to be shown by the party to enable the Court to exercise its discretion to grant leave. In the light of the law as laid down above, the point is whether the 1st respondent/6th defendant could show sufficient reasons or not.

a) The contention of the petitioner precisely is that the 6th defendant showed different untenable and inconsistent reasons in his written statement and the affidavit. In the written statement he mentioned that all the documents were produced before the RDO, Rajampet and they will be produced at the time of trial. Whereas in his affidavit he mentioned that the documents were misplaced. According to the petitioner/D6, he filed petition mentioned documents 2 to 4 before the RDO and hence in the written statement he mentioned as if the documents were filed before the RDO and he would produce them at trial; whereas documents 5 and 6 were misplaced in his house and therefore he mentioned in his affidavit to that effect. He submitted he obtained certified copies of documents 5 and 6 from the Revenue Department but in the meanwhile, originals could be traced out. This is the explanation of petitioner/D6. No doubt, such a clear and elaborate explanation was not given in the written statement and affidavit except stating in the written statement that documents were produced before the RDO and in his affidavit stating that the documents were misplaced. However, in the considered

view of this Court, merely because clarification was not given elaborately, on that ground alone the petition cannot be dismissed, if his reason as a whole is found to be plausible. In the *M.R.Anjaneyulu*'s case (5 supra), it was observed by this Court that while exercising discretion to grant leave, the Courts have to consider relevant aspects such as the conduct of the parties, nature of the documents that are sought to be marked and the usefulness of those documents to adjudicate the suit in an effective manner etc. A perusal of the list mentioned documents would show that they comprise certified copy of registered mortgage deed; original sale deed issued by the District Cooperative bank in favour of respondent No.6; DKT Pattas and notices. These documents would certainly help the Court to adjudicate the matter in a more effective manner as the plea of 6th defendant is that he purchased the suit property in the public auction. The trial Court exercised its discretion in a judicious manner by imposing costs for the delay. Hence, the impugned order suffers no infirmity.

8) In the result, I find no merits in this Civil Revision Petition and accordingly, the same is dismissed. No costs.

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

U. DURGA PRASAD RAO, J

Dt. 02.03.2017

scs