

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION Nos.65 and 66 of 2018

COMMON ORDER:

Heard Mr.RA.Chary for petitioner. No representation for respondents.

The 1st defendant in O.S.No.19 of 2011 on the file of the V Additional District Judge, Karimnagar, is the revision petitioner.

Respondents 1 to 12 herein are the plaintiffs in O.S.No.19 of 2011. Respondents 1 to 12 filed I.A.Nos.262 of 2017 and 263 of 2017 for reopening the evidence of respondents and leave of the Court to receive documents under Order VII Rule 14(3) of CPC.

The trial Court, through the orders impugned in the Civil Revision Petitions accepted the prayers through a brief order. Hence, the Civil Revision Petitions.

Respondents 1 to 12 filed the suit for the relief of perpetual injunction restraining the revision petitioner and defendants 2 and 3 in the suit from interfering with their possession and enjoyment of suit schedule property. The trial of the suit is completed and posted for arguments. At that stage, the instant applications were filed by respondents.

The affidavit filed along with the I.As. for reopening states that evidence on both sides is closed. Respondents 1 to 12 could

lead the evidence of PW.1 alone. With the completion of evidence of PW.1, the evidence of respondents 1 to 12 was closed. The relevant portions of affidavit in I.A.Nos.262 and 263 of 2017 are excerpted hereunder.

I.A.No.262 of 2017

“If this Hon’ble Court declines to reopen the evidence of plaintiffs side, we have to suffer an irreparable loss and great hardship in prosecuting the case in the best of our interests and the very purpose of contesting the matter right from the year 2011 would totally be frustrated leaving nothing but an utter dismay to us on all the ends.

This petition is thus intended for the aforesaid bonafide purpose alone but not otherwise. Apart that, no prejudice would occur to any of the respondents, if an opportunity is given to reopen the evidence of plaintiffs.”

I.A.No.263 of 2017

“.... that we have already filed relevant documents along with the list of documents at the time of filing of the suit. Now, I am filing the below listed documents:- 1) Original Possession Certificate bearing No.B1/ 194/ 2009, dt.08-09-2009 (2) CC of Assignment Proceeding bearing No.B/ 2443/ 55 dated 31.01.1956 and 3) CC of 1-B Certificate. The said documents are very important for the suit to know the possession and title over the suit land and for disposal of the suit.”

The revision petitioner opposed both the applications. The revision petitioner referred to the time taken by respondents 1 to 12 to adduce evidence in the matter and that no ground is made out for accepting either of these prayers.

The orders in these two Civil Revision Petitions present the exercise of discretion by the trial Court without appreciating the pleadings in the plaint, written statement, stage and purpose of reopening, or granting leave to file document, and the weighty reasons that weighed for reopening the suit, which is posted for arguments. Further, it is not verified whether the documents now sought to be introduced by respondents 1 to 12 have foundation in the plaint or not.

The operative portion of the order in I.A.No.262 of 2017 reads as follows :-

“It is well settled that the power of reopening the evidence of witnesses under Section 151 C.P.C. can be exercised by the court and for that purpose the case can be re-opened. But, such power has to be invoked not to fill up the lacuna. However, it is the contention of the petitioner that the defendants have filed the documents before the court vide I.A.No.236 of 2017 in this suit requesting to be marked in the above suit. Moreover, it is the contention of the petitioner that the document sought to be received in the suit vide I.A.No.236 of 2017 are very important in deciding the suit.

But, it is to be noted that as rightly contended by the counsel for the respondent, that the petitioners have not stated reasons for not filing the such documents at the time of marking their documents. But, however, with a view to fair opportunity to present their case, this petition can be allowed on a condition that the petitioner shall adduce their evidence day by day and complete it by 05.01.2018, since the suit pertains to the year 2011.”

The operative portion of the order in I.A.No.263 of 2017 reads as follows :-

“The perusal of record shows the original suit is filed for perpetual injunction. The suit is coming up for arguments. The petitioner submitted that the documents which were sought to be taken into the suit were very important to know the possession and title over the suit schedule land as such one opportunity should be given to the petitioner. Hence, this petition is allowed. The documents are received subject to proof and relevancy. The documents i.e., Original Possession certificate bearing No.B1/ 194/ 2009, dated 08.09.2009, C.C. of Assignment Proceeding bearing No.B/ 2443/ 55, dated 31-01-1956 and C.C. of 1-B Certificate filed by the petitioner are to be received subject to proof and relevancy.”

This Court has no option except to express its displeasure in the manner and mode of discharging judicial function by the learned trial Judge. The orders firstly do not refer to reasons and secondly adopts contentions as its reasons for accepting the prayers. The trial Court at least could have juxtaposed the documents to be marked with pleadings on record, whether the reasons stated in the affidavit for reopening or for granting leave to introduce documents at this stage of the matter are convincing etc. The trial Court does not have so much discretion to order applications in this fashion.

As this Court is convinced that the orders are passed by the trial Court do not satisfy the requirements of law and procedure, both the orders are set aside. I.A.Nos.262 of 2017 and 263 of 2017 are remanded to trial Court for examining the record and exercising its discretion as stipulated by law. The said exercise

shall be undertaken and carried out within one week from the date of receipt of a copy of this order.

The Civil Revision Petitions are allowed and remanded. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 03-04-2018

Note:

Issue C.C. forthwith

(B/o)

Prv

