

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.97 OF 2018

DATED :16.03.2018

Between :

Tallepalli Merari Samuel S/o.Late T.C.Samuel,
Aged 63 yrs, Occu : Retired Govt. Employee,
R/o.H.No.2-6-1554, Near Old Bus Depot,
Hanamkonda, Warangal City and District.

.. Petitioner

And

Tallapelly @ Jannu Ludia Blossom W/o.J.Jeevarathnam,
Aged 65 yrs, Occu : Household, R/o.Vasavi Colony,
Pochammamaidan, Warangal City and District & another

.. Respondents



This court made the following :

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ORDER :

The respondent/plaintiff filed suit for partition in O.S.No.86 of 2009 on the file of VII Additional District Judge, Warangal. Petitioner herein being the defendant No.2 filed I.A.No.699 of 2017 to receive enlisted documents as exhibits on behalf of the 2nd defendant by condoning the delay. According to the petitioner/defendant No.2 a 'Will' was executed on 25.05.1977 by his father bequeathing the suit schedule property in his favour and therefore claim of the respondent/plaintiff is not valid.

2. The defendants filed written statement in the year 2010. In paragraph No.11 of the written statement a mention is made of execution of a 'Will' on 25.05.1977. However, the document was not filed along with the written statement. The suit is at the stage of recording deposition of defendant No.2. At that stage, the above I.A., was filed.

3. In the affidavit filed in support of the application except for stating that a Will is executed and could not be filed earlier and not filing the document earlier was not intentional, no averment is forthcoming as to why the said document was not filed and, in who was in possession of the said document. A bald averment is made praying to condone the delay in not filing the document.

4. In the counter affidavit filed by the respondent/plaintiff, claim of the petitioner/defendant that 'Will' was executed was strongly denied and it was contended that same is created with forged signatures in collusion with alleged witnesses.

5. Considering the rival claims the court below noticed that it was not the case of the petitioner/defendant No.2 that he was not in possession of the document and no explanation is forthcoming as to why he kept quiet for eight years in filing the document.

6. Learned counsel for the petitioner sought to contend that since a specific averment was made in the written statement about existence of a 'Will', his prayer could not have been rejected. He would submit that presentation of document would only advance the cause of justice and for technical reasons such plea cannot be rejected.

7. Per contra, learned counsel for the respondent/plaintiff by placing reliance on the decision of this Court in ***“Union of India, Ministry of Finance (formerly Ministry of Disinvestment), rep., by its Secretary, New Delhi Vs Y.S.Hi-Tech Secure Print Pvt. Ltd., rep., by its Managing Director, Hyderabad¹***, would submit that unless sufficient cause is shown in filing the document which was not filed along with the written statement, such plea cannot be accepted and that the document sought to be introduced at the belated stage is only to protract the litigation.

8. As per Order VIII Rule 1A of Code of Civil Procedure, it is mandatory for the defendants to file all the documents relied upon by them along with the written statement. If the documents are not filed at the initial stage, no such document can be filed later. However, discretion is vested in the Trial Court to permit filing of documents at a later stage. Thus, filing of document at later stage is subject to satisfaction of the Court. Therefore, whenever the

¹ 2010 (3) ALT 104

documents are not filed along with the written statement and defendants seek to file document at later stage, it is mandatory for the party to disclose reasons for not filing the document earlier and assign cogent reasons in support of the plea to present the document at a later stage. No sufficient cause is shown. The averments in the affidavit filed in support of the revision petition are vague and bald.

9. I do not see any error committed by the trial court in not exercising its discretion to permit the petitioner to present the document at a belated stage warranting interference.

10. The Civil Revision Petition is dismissed. Pending miscellaneous petitions, stand closed.

16th March, 2018
Rds

P.NAVEEN RAO,J

