

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.283 AND 295 OF 2018

COMMON ORDER:

These two civil revision petitions are being disposed of by this common order as they are filed by the defendants in O.S.No.598 of 2011.

The said suit was filed by the respondent herein seeking partition of the suit schedule properties and she is none other than the daughter-in-law of the petitioners 1 and 2 herein. The evidence of the plaintiff was completed and D.W.1's evidence was also completed. At that stage, the petitioners filed I.A.No.837 of 2017 for receiving certain documents for condoning the delay and I.A.No.850 of 2017 for issuing summons to the Tahsildar, Nellore, to produce the record relating to purchase of the properties by the first defendant. When the said two applications were dismissed by separate orders on 05.12.2017, these two civil revision petitions were filed.

In support of the application in I.A.No.837 of 2017, the petitioner did not give any reasons except stating that consequent to the evidence adduced by him, the certified copies of the documents annexed to the application were obtained in view of the cross-examination conducted by the plaintiff. In support of the application in I.A.No.850 of 2017, the petitioner stated that item No.2 of the plaint 'A' schedule property was covered by patta, dated 13.02.2008, issued by the Tahsildar and since it was an encroachment, the same was regularised by the Nellore Municipality by proceedings, dated 02.06.1999, on payment of market value. It is his exclusive property.

The said averments were denied by the respondent herein by filing a counter affidavit stating that the petitioners did not file the documents, which are sought to be produced and even after filing I.A.No.645 of 2017 to recall first petitioner to adduce further evidence, no such document was

filed along with the said application. Document Nos.4 and 7 mentioned in the petition were already marked as Exs.B.2 and B.3. Further, the petitioners did not file the original documents 1 to 3, 5, 6 and 8 to 10 mentioned in the petition and they are only certified copies and there is no explanation for filing such copies. The petitioners also did not explain the reasons for not producing those documents earlier. In the affidavit filed in support of the application in I.A.No.850 of 2017, it is stated that the said item No.2 of the plaint 'A' schedule property was purchased in the name of the second petitioner with joint family funds, but is not an exclusive property of the second petitioner. The petitioners have not filed the original patta alleged to have been issued in favour of the second petitioner and no reason was shown for not filing such original patta. The trial Court dismissed I.A.No.837 of 2017 observing as follows.

“Suit is filed for partition. Petition is filed by the petitioners/defendants. The defendants did not file these documents along with written statement. On one occasion, he filed chief-examination affidavit and got marked Exs.B.1 to B.3. Later, he filed another I.A., and got himself recalled to receive his further chief-examination affidavit. In that event also he did not mention about the particulars of these documents. He did not mention how these documents are relating to prove this case, why he did not file these documents along with the written statement and at the time of his evidence and at the time of recalling his evidence for adducing further evidence. All the documents filed by him are certified copies. The suit is of the year 2011. He could have obtained these documents at earlier point of time and could have filed these documents at least even at the time of his evidence. Order 8 Rule 1(a) of CPC is mandatory provision. As per the said provision, he has to file all the documents along with the written statement. As per Order 8 Rule 1(a) of CPC document shall not be received at the time of hearing of the suit. The petitioner is filing petitions one after another in order to drag the case and to cause delay in disposal of the case. There are no merits in the petition. Hence, the petition is dismissed.”

The trial Court dismissed I.A.No.850 of 2017 observing as follows.

“Petition is filed to issue summons to the Tahsildar, Nellore, to produce the patta and related record. The petitioners not mentioned in their petition

what happened to the original patta, why they are unable to produce the document. Without filing the original document they are seeking the Tahsildar to produce the document which was in his possession. Without filing original record, no purpose will be served even if the Tahsildar produced the record available with him. The Hon'ble Supreme Court and High Courts in several decisions held that public servant shall not be summoned mere for asking unless there is a necessity for summoning him to explain the discrepancy and without his evidence that discrepancy cannot be cured. In this case, the petitioners not filed the original patta, but, seeking permission of the court to issue summons to the Tahsildar. The first petitioner himself got examined as D.W.1 and marked some documents. Again he filed another petition to recall himself for the purpose of adducing further evidence. After adducing further evidence, he came up with present petition. That shows his intention is to drag the case and to cause the delay for disposal of the suit. There are no grounds to summon the Tahsildar to produce the patta and its records as the petitioners did not file original patta and there is no discrepancy which seems production of record pertaining to the patta is mandatory. Hence, there is no necessity to issue witness summons to the Tahsildar, Nellore."

A careful perusal of the orders passed by the trial Court along with the averments made by the parties in support of their contentions clearly shows that the orders passed by the trial Court are proper in the facts and circumstances of the case and they do not warrant any interference by this Court.

The civil revision petitions are accordingly dismissed. Consequently, miscellaneous petitions, if any, pending in these petitions, shall stand closed.

A.RAMALINGESWARA RAO, J

16.02.2018
pln