

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.R.P. Nos.353, 380 and 352 of 2018

COMMON ORDER :

(1) C.R.P. No.353 of 2018 :

This revision petition is filed aggrieved by the order dated 30.11.2017 in I.A. No.246 of 2017 in O.S. No.18 of 2013 on the file of the Senior Civil Judge, Bodhan, filed to reopen the evidence of plaintiff for marking of the documents filed in I.A.No.247 of 2017.

(2) C.R.P. No.380 of 2018 :

This revision petition is filed aggrieved by the order dated 30.11.2017 in I.A. No.245 of 2017 in O.S. No.18 of 2013 on the file of the Senior Civil Judge, Bodhan, filed to recall P.W.1 for marking of the documents filed in I.A. No.247 of 2017.

(3) C.R.P. No.352 of 2018 :

This revision petition is filed aggrieved by the order dated 30.11.2017 in I.A. No.247 of 2017 in O.S. No.18 of 2013 on the file of the Senior Civil Judge, Bodhan, filed to receive the documents i.e., (1) certified copy of mutation order; (2) mutation fees receipt; (3) mutation proceedings; and (4) certified copy of order and decree in I.A. No.133 of 2006 of Junior Civil Judge, Bodhan.

(4) Since in all the revision petitions, the petitioner herein is the respondent/defendant and respondent herein is petitioner/plaintiff in all the I.As., the petitioner is referred as petitioner and respondent as respondent for the sake of convenience.

(5) In all the petitions the contention of the petitioner is the respondent filed the suit for eviction and for arrears of rents. There is no whisper about the subject documents either in the plaint or in the evidence of P.W.1. These documents were filed at the fag end of the case, as such it is not acceptable to re-open the evidence of P.W.1; recall P.W.1 for marking of the documents; and to receive the documents.

(6) It is further contended that these petitions are filed only to fill up lacunas and that the trial Court ought to have seen that whether these documents are having any bearing on the final decision of the suit and whether it will cause any prejudice to the petitioner/respondent/defendant.

(7) On the other hand, respondent contended that originally the petitioner/defendant filed written statement admitting the landlord and tenant relationship. Subsequently, he amended the written statement, as per orders in I.A. No.279 of 2015 dated 28.10.2015, against which C.R.P. No.554 of 2016 was filed and which was

allowed on 11.3.2016, thereby Niyamath Ali Khan, brother of respondent, is owner, disputing the landlord and tenant relationship, which necessitated respondent/plaintiff to file the present applications to re-open the evidence of P.W.1; recall P.W.1 for marking of the documents; and to receive the documents. By allowing these applications, no prejudice will cause to petitioner. The orders of the trial Court in allowing reopen, recall and receive documents petitions in I.A. Nos.246, 245 and 247 of 2017 respectively are legal, valid and do not suffer from any legal infirmities.

(8) Now the point that arises for determination is :

“Whether the orders of the trial Court in I.A. Nos.246, 245 and 247 of 2017 are sustainable?”

(9) The admitted facts culled out from the record are that the respondent/plaintiff filed O.S.No.18 of 2013 for eviction of the defendant from the suit schedule property (3 mulgies bearing Municipal No.1-4-238) situated at Bodhan, Nizamabad District and for a decree of Rs.1,64,000/- with interest and future mesne profits and for costs. It is also a fact that the revision petitioner filed written statement disputing the landlord and tenant relationship. Subsequently, as per the averments of the revision petition itself, the petitioner got amended the written statement after obtaining permission from the Court disputing the landlord and tenant relationship.

(10) In fact, these petitions i.e., I.A. No.246 of 2017 under Section 151 C.P.C. is filed to reopen the evidence of respondent/plaintiff for marking documents filed in I.A. No.247 of 2017; I.A. No.245 of 2017 under Order 18, Rule 17 C.P.C. is filed to recall P.W.1 for marking documents filed in I.A.No.247 of 2017; and I.A. No.247 of 2017 under Order 7, Rule 14 C.P.C. is filed to receive documents six in number. After giving opportunity to the petitioner/respondent for filing counter and hearing, I.As.246, 245 and 247 of 2017 are allowed.

(11) The reason assigned by the trial court in allowing three petitions is that in view of the additional issue whether the plaintiff is the owner of the suit schedule property, certain evidence is required and more over the proceedings of the Municipal Commissioner and also I.A. order wherein petitioner (respondent herein) has filed suit for injunction against the Municipal Council, Bodhan for collecting house tax shows about the ownership and therefore if opportunity is given, no prejudice would be caused to the respondent (petitioner herein).

(12) In the case of *Bolla Ajay Babu Vs. Nalla Manikyamma* (2010 (1) ALD 163) the High court is of the opinion that in the absence of any reference to the documents, which are sought to be received, in the pleadings, the petitioner cannot seek leave of the Court to

receive such documents, at the belated stage, when the suit is coming up for further evidence on the side of the plaintiff.

(13) In another decision in *Harish Chandra Vs. Rahul Kumar* (AIR 2018 ALLAHABAD 1) it was held that where the application is found to be *bona fide* and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic.

(14) In the instance case originally the respondent filed the suit for eviction and for arrears of rents. Basing on the pleadings the petitioner/defendant filed his written statement admitting the landlord and tenant relationship. After filing the written statement, issues were framed and there is no issue with regard to ownership of the respondent/plaintiff. After amendment, an additional issue was framed as to Whether the plaintiff is owner of the suit schedule property, which is not disputed by the petitioner. The petitioner submitted that the municipal authorities came for collection of taxes and reported that one Niyamath Ali Khan is the owner of the subject schedule property, which prompted the petitioner to amend the plaint.

(15) The settled law is that after making an amendment, either in the plaint or in the written statement, the other side has to be given an opportunity to file re-joinder to the said amended pleading. Unfortunately, as stated by both counsel, there is no such court order permitting to file rejoinder. As matter stood thus, the plaintiff did not choose to mention these documents in the plaint. It is only when the defendant amended the written statement disputing the title of the plaintiff-landlord, it necessitated the respondent/plaintiff to secure documentary evidence. Accordingly, he secured the documents i.e., (1) certified copy of mutation order; (2) mutation fees receipt; (3) mutation proceedings; and (4) certified copy of order and decree in I.A. No.133 of 2006 of Junior Civil Judge, Bodhan and filed the I.As. (i) to re-open the evidence of P.W.1; (ii) recall P.W.1 for marking of the documents; and (iii) to receive the documents. Since the documents were filed because of the amendment of the written statement and consequent framing of additional issue, these documents do not found place in the plaint originally filed.

(16) The effect of deletion of order XVIII, Rule 17-A with effect from 1.7.2002 does not mean that no evidence can be received at all, after the party closes his evidence. It only means that the amended structure of C.P.C. found no need for such a provision, as the amended Code

contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence. The amended provision of C.P.C. contemplates and expects the trial court to hear the arguments immediately after the completion of evidence and proceed to judgment. Therefore, it is unnecessary to have an express provision for re-opening the evidence or for recalling any witness for further examination. But, if there is time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence, if it is relevant and necessary in the interest of justice. On the issue which will assist the Court in rendering justice, if the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to re-open the evidence, recall the witness and to file documents and permit fresh evidence.

(17) The respondent/plaintiff wants to file documents i.e., (1) certified copy of mutation order; (2) mutation fees

receipt; (3) mutation proceedings; and (4) certified copy of order and decree in I.A. No.133 of 2006 of Junior Civil Judge, Bodhan, which are relevant documents and which will assist the Court to clarify the issues and will assist in rendering justice. These petitions filed by the respondent/plaintiff are bona fide and they are relevant and necessary for proper adjudication of the facts in issue in the main suit O.S. No.18 of 2013. The respondent/plaintiff has clearly explained the reasons for non-filing of the documents earlier.

(18) As discussed above, since the petitioner/defendant did not dispute the ownership, there was no need for the respondent/plaintiff to mention all these documents in the plaint. But the petitioner/defendant when came forward disputing the ownership by way of amendment, which necessitated the plaintiff to secure those documents, and file the present I.As., which will assist the trial Court in rendering justice.

(19) In view of the facts and circumstances discussed above, I am of the considered view that the respondent/plaintiff has shown sufficient cause or reason for non-mentioning of these documents in the plaint and also non-production earlier and also the reason which necessitated the respondent/plaintiff to produce those documents by reopening the evidence and recalling the

witness for marking those documents. Therefore, the trial Court, having satisfied with the cause shown for filing these applications, and exercising the discretion, ordered to re-open the evidence and recall the witness and to receive documents by allowing applications i.e, I.A. Nos.246, 245 and 247 of 2017. By allowing these petitions, no prejudice or loss will cause to petitioner/defendant and he has every right to raise relevancy and admissibility of documents when those documents are tendered for evidence through P.W.1 and also cross-examine witness/witnesses produced by plaintiff to establish his ownership and if necessary, to adduce rebuttal evidence. The balance of convenience is in favour of the respondent/plaintiff. In such circumstances, I find no ground in all the three Civil Revision Petitions.

(20) Accordingly, Civil Revision Petitions are dismissed. But, however, in the facts and circumstances of the case, both parties shall bear their own costs.

(21) Consequently, miscellaneous petitions pending, if any, in these revision petitions shall stand closed.

JUSTICE N.BALAYOGI

21st February, 2018

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