

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1020 of 2018

ORDER :

Heard the counsel for petitioners, and the counsel for 1st respondent.

2. The petitioners herein have filed the Civil Revision Petition assailing the order dt.09.01.2018 passed in I.A.No.11 of 2018 in O.S.No.75 of 2003 on the file of Principal Junior Civil Judge, Madanapalle.

3. The petitioners herein are defendants in the above suit which had been filed by 1st respondent against petitioners and others for declaration of title to the subject property and for perpetual injunction.

4. It is the pleading of 1st respondent in the plaint that there was earlier litigation in O.S.No.302 of 1976 between the parties which ended in S.A.No.368 of 1995 before this Court on 19.11.1998 and that in the said Second Appeal No.368 of 1995, the High Court was not informed that there was a public auction held by Land Mortgage Bank, Madanapalli during the pendency of the said litigation insofar as the property in Survey No.511/1 is concerned which is subject matter of O.S.No.75 of 2003 filed by 1st respondent.

5. However, the 1st respondent did not file judgments in the suit O.S.No.302 of 1976 or in the First Appeal No.100 of 1992 arising out of it, or the judgment of the High Court in S.A.No.368 of 1995, pronounced on 19.11.1998. He also did not mark any of these documents in his evidence.

6. The petitioners, who are contesting the claim of 1st respondent along with others, had filed written statement denying the right of 1st respondent in the said property.

7. No doubt, they also did not file these documents along with the written statement filed by them in O.S.No.75 of 2003, but they filed I.A.No.11 of 2018 on 02.01.2018 under Order VIII Rule 1-A(3) of Civil Procedure Code to receive the judgments and decrees in the said Suit, First Appeal and Second Appeal stating that they obtained the certified copies of the said documents which support their contention in the Suit.

8. This application, viz., I.A.No.11 of 2018, was opposed by 1st respondent, who contended that the said application is a belated one and the reasons given by petitioners are unconvincing. The Court below accepted the said contention of 1st respondent and dismissed the said application.

9. Challenging the same, the present Civil Revision Petition is filed.

10. The Counsel for petitioner contended that, in fact, it was the duty of the 1st respondent to file the said documents having referred to them in the plaint, and having failed to do so, he cannot be allowed to take advantage of his own wrong and prevent the petitioners from filing the said documents, particularly in view of the decision of the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) By LRs. and others**¹ wherein the Supreme Court has held that a party to a litigation has to place all the facts and approach the Court with clean hands, and

¹ (1994) 1 SCC 1

otherwise, he cannot be granted relief in the suit on the ground of suppression of facts and fraud.

11. The counsel for 1st respondent opposed the said contentions, and supported the order passed by the Court below.

12. No doubt, Order VIII Rule 1-A(3) of Civil Procedure Code requires leave of the Court to be obtained for filing of documents by a defendant who did not file the documents along with the written statement and the grant of leave is discretionary, but the fact remains that in the present case, the very documents which the petitioners wish to file are the documents which were relied upon by 1st respondent in the suit. Therefore, as per the decision of the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu** (1 supra) it was incumbent on the 1st respondent to file the said documents relating to the said litigation along with his plaint, or at least in his evidence. When he failed to do so, there was nothing to prevent the petitioners from filing the same since the said documents help the Court in adjudicating the issue involved in the suit.

13. The purpose of procedural law is not to defeat substantive rights, and the 1st respondent, who has suppressed these documents, cannot be allowed to take advantage of his own wrong and subvert the course of justice.

14. Therefore, in my considered opinion, it was a fit case for the Court below to grant leave to petitioners to file the said documents though belatedly, and the petitioners cannot be penalized so as to benefit the 1st respondent who had deliberately suppressed the said documents.

15. Accordingly, the impugned order passed by the Court below is set aside. I.A.No.11 of 2018 in O.S.No.75 of 2003 on the file of the Principal Junior Civil Judge, Madanapalle, is allowed, and the Court below is directed to receive the said documents during the course of evidence of DW.1 and proceed further in the matter.

16. Accordingly, the Civil Revision Petition is allowed with the above directions. No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06.04.2018

Ndr/*

