

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.1353 of 2018

ORDER:

Heard Mr.N.Ashok kumar, counsel for petitioner.

The 3rd defendant in O.S.No.18 of 2011 is the revision petitioner. The revision petitioner filed I.A.No.16 of 2018 seeking permission of the Court to receive the documents referred therein. The prayer has been rejected by the trial Court. Hence, the Civil Revision Petition.

The 1st respondent filed O.S.No.18 of 2011 for perpetual injunction against the revision petitioner herein and respondents 2 and 3. The revision petitioner by way of counter claim prays for specific performance of agreement of sale dated 25.06.1999. When the suit is coming for the evidence of defendant, the instant application is filed. The reasons stated in the affidavit, with the assistance of Mr.Ashok Kumar, have been perused by this Court. The objection of 1st respondent is brief, but the substantive objection against receiving the documents after lapse of considerable time and that sufficient reasons are not explained for from 2011 till 2018.

The learned trial Judge recorded the following findings while dismissing the application.

“I have considered the arguments on both sides. The petitioner has filed pahanies and one MRI report. The pahanies are filed in order to show that D.Ws.4 to 7 have property in the suit

locality. The petitioner could have filed these documents if he so desires along with the chief examination affidavit of his witnesses and only after the cross examination of the witnesses on this aspect, only with an intention to fill up the gaps in the evidence, he has filed the documents. Further as rightly contended by the learned counsel for the respondent, the petitioner has obtained the true copy of the MRI report on 12.08.2011 and it is stated that he has misplaced the same in his house. He did not speak about it in his pleadings and evidence and now he wants to file them.

I am of the opinion, the suit is of the year 2011, the petitioner could be diligent enough to file the documents and without explaining the reasons for not filing the documents, the court cannot allow the petition. Therefore, this petition is dismissed.”

Mr.Ashok Kumar vehemently contends that the documents now sought to be introduced have basis in the written statement. Therefore, the finding of the trial Court is unsustainable and liable to be set aside. He further contends that these documents are very important for proving the case of revision petitioner and therefore the prayer ought to have been allowed by the learned trial Judge. Finally, he contends that revision petitioner will not take time in further proving these documents, if are permitted by this Court. Therefore, he prays for appropriate orders.

This Court has perused the record. The prayer for permission is firstly considered from the reasons stated for not producing the documents at the earliest point of time and thereafter the other aspects namely that they are material, relevant etc. The documents now sought to be introduced,

admittedly are of the year 2011 and why this document is not produced at the earliest point of time is not stated in the affidavit. Even assuming that an attempt is made in this behalf in the affidavit, by permitting the party now to introduce this document, certainly the overall conduct of further trial will have to be considered by the trial Court. In the case on hand, for the reasons already excerpted, the trial Court for valid reasons declined to exercise its discretion or jurisdiction, this Court in its jurisdiction under Article 227 cannot substitute in every element on the reasons of trial Court and come to an independent conclusion, more particularly, while the impugned order is tenable.

The Civil Revision Petition fails and accordingly dismissed.
No order as to costs.

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

Dt: 15.03.2018
dv

S. V. BHATT, J

