

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.1392, 1442 and 1453 of 2018

COMMON ORDER :

These three Revisions arise between the same parties and out of the same suit. Therefore, they are being disposed of by this common order.

2. The petitioner in both these Revisions is the General Power of Attorney Holder of the plaintiff / R. Kalpana.

3. The plaintiff filed suit O.S.No.49 of 2011 on the file of the District Court, Chittoor for specific performance of an agreement of sale dt.05.06.2008, and for possession of the property mentioned therein.

4. Written statement was filed by respondent opposing the suit claim.

5. A specific pleading was raised by respondent in the written statement that she was not ready and willing to pay the balance consideration and complete the transaction.

6. After issues were framed, the evidence on the side of the plaintiff was closed.

7. Thereafter, the respondent / defendant got himself examined as DW.1 and got marked Exs.B.1 to B.8.

8. Later, the plaintiff's arguments were completed by 24.11.2017, and defendant's arguments were completed by 18.12.2017.

9. Thereafter, the counsel for the plaintiff requested for time for giving reply arguments. Therefore, it was posted to 21.12.2017.

10. Thereafter, two adjournments were sought by the plaintiff's counsel and then three I.A.s viz., I.A.No.6, 7 and 8 of 2018 were filed by the General Power of Attorney Holder of the plaintiff.

11. I.A.No.8 of 2018 was filed under Order 7 Rule 14 C.P.C. for permission to file 12 documents mentioned therein by condoning the delay in filing the same; I.A.No.6 of 2018 was filed under Section 151 C.P.C. to re-open the suit for the purpose of recalling PW.1 for marking these documents; and I.A.No.7 of 2018 was filed under Order 18 Rule 17 C.P.C. to recall PW.1 in the suit.

12. Counter-affidavit was filed by the respondent opposing the three applications. He pointed out that when the suit was at the fag end of its disposal and was coming for reply arguments of the plaintiff / petitioner, these applications have been filed belatedly; and therefore, they should be dismissed.

13. By a common order dt.16.02.2018, the Court below dismissed the said applications.

14. After noticing the delay in filing the applications after the arguments of both sides were addressed and when the matter was

posted for reply arguments, the Court below held that they are not entitled to file these applications at the fag end of the suit, which is one of the oldest suits and pre-2012 matter. It also held that the reason why the petitioner filed these applications is to show that she had the capacity and was also ready and willing to fulfill her obligations under the agreement of sale, but there was no plea with regard to the capacity of the plaintiff in the written statement filed by the respondent / defendant, and no specific issue had also been framed in that respect. It also noted that no specific suggestions were given by the respondent / PW.1 in that regard, and concluded that there was no valid reason why these documents could not be filed earlier though four of such documents, being sale deeds, were executed prior to the date of filing of the suit itself. It also opined that the said documents were not at all relevant. It concluded that the petitioner was negligent in filing these applications and there was unexplained delay in filing them.

15. Assailing the same, the present Revisions are filed.

16. The counsel for petitioner sought to contend that the Court below ought to have allowed these applications though they were filed at a belated stage in the interest of justice since grave prejudice would be caused to the petitioner and the plaintiff if they are not allowed. He also contended that no prejudice would be caused to the respondent if the documents are received, the suit is re-opened and PW.1 is recalled to mark the said documents.

17. Sri O. Udaya Kumar, counsel for respondent, however refuted the said contentions and supported the order passed by the Court below.

18. From the facts narrated above, it is clear that the three applications had been filed by the petitioner on behalf of the plaintiff after the arguments in the suit were addressed by the respondent on 18.12.2017 when the matter was adjourned for giving of reply arguments on the side of the plaintiff.

19. Order VII Rule 14 (3) C.P.C. states that a document which ought to be produced in Court by a plaintiff when the plaint is presented but is not so produced, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Grant of leave is not automatic and the petitioner / plaintiff ought to explain why the documents in question were not filed at an earlier point of time at the trial stage.

20. It is merely stated by petitioner in the affidavits filed in support of the I.As that on account of *bona fide* mistake, inadvertence or oversight, the documents in question could not be filed at an earlier point of time.

21. In my opinion, it is clear that there has been negligence on the part of the plaintiff in not filing these documents at an earlier point of time.

22. That apart, the reason assigned for filing of these documents by the plaintiff is that they are necessary to show that the plaintiff and her husband had capacity to pay the consideration for purchase of the schedule property. When there is no such plea raised in the written statement by the respondent and no suggestion in that regard was also put to PW.1 during his cross-examination, it cannot be said that the documents sought to be filed are relevant.

23. Also, four of the documents sought to be filed along with I.A.No.8 of 2018 are registered sale deeds which had come into existence much before the filing of the suit itself, and the petitioner and plaintiff are parties to the documents. So, these documents would have been in their possession even by the date of filing of the suit. Why they were not filed at an earlier point of time is not explained by the petitioner.

24. Therefore, I am of the opinion that the Court below was correct in refusing to receive these documents and in dismissing I.A.No.8 of 2018. Once I.A.No.8 of 2018 is dismissed, the other two I.A.s also deserve to be dismissed and were rightly dismissed by the Court below, and I see no reason to interfere with the order passed in the said applications also.

25. Therefore, the Civil Revision Petitions are dismissed at the stage of admission. No order as to costs.

26. As a sequel, miscellaneous petitions, pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.03.2018

Ndr/*

