

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.2330, 2331, 2332 and 2345 of 2018

COMMON ORDER:

These four Revision Petitions arise out of the same suit between the same parties. Therefore, they are being disposed of by this common order.

2. The 14th defendant in the suit is the petitioner in all these Revisions. The suit had been filed by respondent Nos.1 to 4 in the Revisions against the other respondents for (a)partition of the suit schedule properties into two equal shares and allotting one such share to the respondent Nos.1 to 4 and the remaining one share to respondent Nos.5 to 10; and (b) for a perpetual injunction restraining the respondent Nos.10 to 17 from interfering with the possession and enjoyment of the respondent Nos.1 to 4 of the plaint A and B schedule properties.

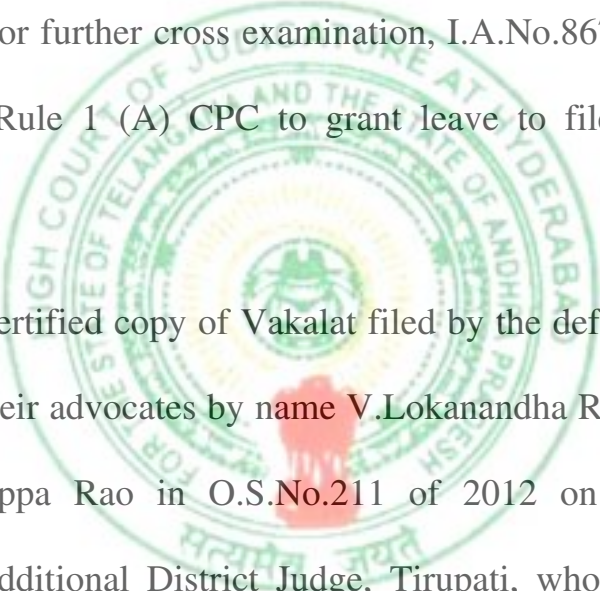
3. The petitioner in the Revisions was impleaded as 14th defendant in the suit by order dt.06-07-2017 in I.A.No.524 of 2016 since he claimed to have purchased item-9 of the plaint schedule under registered sale deed dt.26-10-1998.

4. The petitioner, 11th respondent and 17th respondent are contesting the suit.

5. On behalf of the respondent Nos.1 to 4, P.Ws.1 to 3 were examined and Exs.A-1 to A-5 were marked. On behalf of the defendants, D.Ws.1 and 2 were examined and Exs.B-1 to B-26 were marked.

6. Thereafter, the evidence of the defendants was closed on 16-11-2017 and the matter was posted for arguments on 17-11-2017.

7. At this stage, the petitioner filed I.A.No.865 of 2017 under Section 151 CPC to reopen the suit, I.A.No.866 of 2017 to recall P.W.1 for further cross examination, I.A.No.867 of 2017 under Order VIII Rule 1 (A) CPC to grant leave to file the following documents:

- 
- i) Certified copy of Vakalat filed by the defendants through their advocates by name V.Lokanandha Redddy and H.V. Appa Rao in O.S.No.211 of 2012 on the file of V Additional District Judge, Tirupati, who were plaintiffs and defendant Nos.1 to 5, 9 and 10 in the present suit.
 - ii) Certified copy of Vakalat filed by defendant through their Advocate T.M.Chalapathy in the said suit.
 - iii) Certified copy of Written Statement filed by 5th defendant along with memo of adoption by other defendants through their Advocate in O.S.No.211 of 2012.

- iv) Certified copy of affidavit and petition filed by 5th defendant in I.A.No.64 of 2016 in the suit O.S.No.211 of 2012.
- v) Certified copy of affidavit and petition filed by 5th defendant in I.A.No.65 of 2016 in O.S.No.211 of 2012 and
- vi) Notice of award issued to the petitioner.

8. Petitioner also filed I.A.No.868 of 2017 under Order VI Rule 17 CPC to amend the Written Statement and I.A.No.869 of 2017 under Order XVI Rule 1 CPC to summon the Tahsildar or Nagari Mandal along with 10 (1) Adangal, 1-B Register, E Pattadar pass book register, land acquisition proceedings register pertaining to Sy. No.79/4 which had been subdivided as 79/4A and 79/4B of Nagari village account.

9. Only the 2nd respondent/2nd plaintiff filed counter opposing these applications which were adopted by respondent Nos.1, 3 and 4/plaintiff Nos.1, 3 and 4.

THE ORDER DT.4.1.2018

10. These applications were initially disposed of by order dt.04-01-2018.

11. The Court below held that the contesting defendants did not propose any evidence and so their evidence was closed on

16-11-2017 and the matter was posted for arguments on 17-11-2017. The petitioner filed Chief Examination Affidavit along with I.A.Nos.757 and 758 of 2017 to reopen the suit and to receive various documents and they were allowed; subsequently, defendant Nos.7 and 13 filed I.A.Nos.805 and 806 of 2017 along with chief examination affidavit of D.W.2 (B-13) and the said I.As. were allowed; D.W.2 was examined and Exs.P-1 to P-22 were marked; the Court had passed a conditional order dt.05-12-2017 directing the contesting defendants to file all their witness affidavits by 08-12-2017 failing which it would be deemed that they have no further evidence and posted the matter to 08-12-2017; defendant Nos.7, 13 and 14 did not produce any evidence on 08-12-2017 and so their further evidence was closed and the case was posted for arguments to 12-12-2017. On 12-12-2017, petitioner filed an application under Section 151 CPC to reopen the suit producing evidence but he did not produce any evidence.

12. It further held that said application was returned and the suit was posted to 14-12-2017; at this stage, 13th defendant filed additional affidavit and also chief examination affidavit of D.W.3 along with I.A.Nos.855 of 2017, 856 of 2017 and 857 of 2017 for reopening the suit, receiving additional chief examination of D.W.1 and also examining D.W.3; the Court below allowed the three I.As. and thereafter examined D.W.3 and closed the evidence of both sides by posting the matter for arguments on 20-12-2017.

13. It held that on 20-12-2017, the petitioner filed I.A.Nos.865, 866, 867, 868 and 869 of 2017 as mentioned above. It held that the chief examination affidavit of P.W.1 was filed on 13-09-2017, cross examination of the said witness was deferred at the request of the contesting defendants; on 12-10-2017, P.W.1 was cross examined by defendant Nos.7, 13 and 14 and the petitioner/14th defendant cross examination itself runs into 3 ½ pages.

14. It is stated that the petitioner never made any attempts seeking P.W.1's evidence thereafter, till he filed the applications referred to above. It also noted that the affidavit of the petitioner did not show on what aspects he could not cross examine P.W.1 and how they are material to his case. He therefore concluded that there is no justifiable reason to recall P.W.1 at the belated stage.

15. Coming to I.A.No.867 of 2017, it held that the said application was filed seeking grant of leave to receive certain documents, that the petitioner applied for certified copy of documents on 13-10-2017 and claimed that therefore he could not file them along with Written Statement. But there was no sufficient cause explained by the petitioner to grant leave to receive such documents at the stage when the matter was posted for arguments.

16. As regards I.A.No.868 of 2017, the petitioner had sought amendment of the Written Statement stating that when he purchased the property item-9 of the suit schedule, its survey number is 79/4 and thereafter, the extent which he purchased was given a sub division

number and it became Sy.79/4A, that Government acquired Ac.0.18 cts in Sy. No.79/4A and subsequently Sy. No.79/4A was further sub divided into 79/4A; that the petitioner could not show in spite of due diligence why he could not raise matter before the commencement of trial and therefore, the amendment sought by the petitioner also cannot be permitted.

17. Insofar as I.A.No.869 of 2017 filed to summon Tahsildar of Nagari to produce document referred therein, the Court held that the petitioner ought to have complied with procedure in Rule 129 (3) of Civil Rules of Practice which requires filing of a plea for production of a record to be made by way of affidavit but the petitioner did not do so and so there is no merit in the said application also.

18. It held that the petitioner was filing petition one by one and causing delay in disposal of the suit and so, it was justified in imposing costs of Rs.1000/- to the Mandal Legal Services Authority. Unfortunately, in the last paragraph in the said order instead of saying that 'I.A.Nos.865 of 2017 to 869 of 2017 are *dismissed* with costs', a typographical error occurred stating that 'applications were *allowed*'.

19. To correct the said error, pointed out by the Office Note dt.19-01-2018, the Court then adjourned the matter to 21-02-2018 for filing objections if any.

20. On 23-01-2018, the learned counsel for respondent Nos.1 to 4 as well as other contesting defendants except the petitioner submitted 'no objection' and contended that the same happened by typographical mistake and clerical mistake.

21. However, the petitioner filed objections contending that the Court cannot sit as Appellate/Revision Court and cannot modify its own order after it had pronounced the order without there being any Review Petition filed by the party. He contended that the applications were allowed on payment of costs of Rs.1000/- and he had paid the costs.

ORDER DT.24-1-018

22. A separate order was passed on 24-01-2018 correcting the order invoking Section 152 CPC and taking note of the fact that in its earlier order dt.04-01-2018, the Court below had clearly rejected all the applications, that in fact the docket orders of five I.As. show that the I.As. had been dismissed and that the 'A-Diary' shows that the I.As. were dismissed on 04-01-2018, that the word 'allowed' in the last paragraph of the order dt.04-01-2018 is clearly a typographical mistake made by oversight and the Court had not noticed it at that time. It held that the typographical mistakes are in the nature of accidental slips or omissions; and petitioner cannot take advantage of it and claim that the applications are allowed. It therefore corrected its order dt.04-01-2018 by substituting the words 'dismissed' for the word 'allowed'.

23. Assailing the same, these four Revisions are filed.

24. Learned counsel for the petitioner however stated that while the Court below was correct in correcting the earlier order dt.04-01-2018, the order dt.04-01-2018 passed in I.A.Nos.865 to 869 of 2017 itself is erroneous. He sought to contend that the petitioner/ D-14 had been impleaded in the suit belatedly only on 06-07-2017, that the petitioner had not been there since inception of suit in 2011 and in the interest of justice, the Court below should have reopened the suit, recalled P.W.1 for further cross examination and allowed the petitioner to mark the documents which he sought to mark apart from permitting him to amend the Written Statement and summoned the Tahsildar, Nagari Mandal.

25. He also pointed out that there was earlier litigation to which the respondent Nos.1 to 4 were parties in O.S.No.211 of 2012 before the V Additional District Judge, Tirupathi and there were certain admissions made by respondent Nos.1 to 4 in the said suit which need to be confronted to P.W.1 and therefore, the Court below should have adopted a liberal attitude by allowing the applications filed by the petitioners.

26. The Court then asked the learned counsel for the petitioner to produce the deposition of 14th defendant as D.W.1 in the suit. In the said deposition, the petitioner did refer to the judgment in O.S.No.211 of 2012 which had been filed by him. The deposition of P.W.1 has also been produced by the learned counsel for the petitioner

which indicated that there was elaborate cross examination by petitioner with regard to O.S.No.211 of 2012.

27. Counsel also admitted that the judgment in O.S.No.211 of 2012 was marked as Ex.B-11 by the petitioner and the same is already on record. Copy of the said judgment has also been produced before this Court and it indicated that the defendants having made appearance through their counsel by filing vakalat, but did not file Written Statement and were set *ex parte* on 21-05-2014 and the suit was decreed on 27-10-2014.

28. When these facts have already come on record, by his own deposition as well as marking of the judgment and decree in O.S.No.211 of 2012 as Ex.B-11, I do not see any reason why the petitioner should again to seek to reopen the suit which had been posted for arguments to enable him to file the vakalaths filed by respondent Nos.1 to 4 herein in the said suit and the affidavit and petition in I.A.Nos.64 of 2016 and 65 of 2016 in that suit.

29. Also the notice of award issued by R.D.O., Chittoor, on 09-12-2011 ought to have been filed by the petitioner when he was in the witness box and he cannot be allowed to be filed at this belated stage. There is no reason assigned by him why it could not be filed earlier.

30. Further, no basis is given in the affidavit filed in support of I.A.No.868 of 2017 seeking to amend the Written Statement as to

when exactly the sub division of land in Sy. No.79/4 actually took place. It is not mentioned in the said affidavit that the said sub divisions 79/4A and 79/4B had occurred after the filing of the Written Statement by the petitioner and therefore it is necessary to amend the Written Statement.

31. More importantly, if the sub division number is not correctly shown by the respondent Nos.1 to 4/plaintiffs in the suit, it could result the respondent Nos.1 to 4 not getting any relief in the suit. So petitioner cannot be said to be prejudiced in any manner by refusing to permit him to amend the Written Statement.

32. As regards the I.A.No.869 of 2017 is concerned, no Revision had been filed challenging the said order by the petitioner.

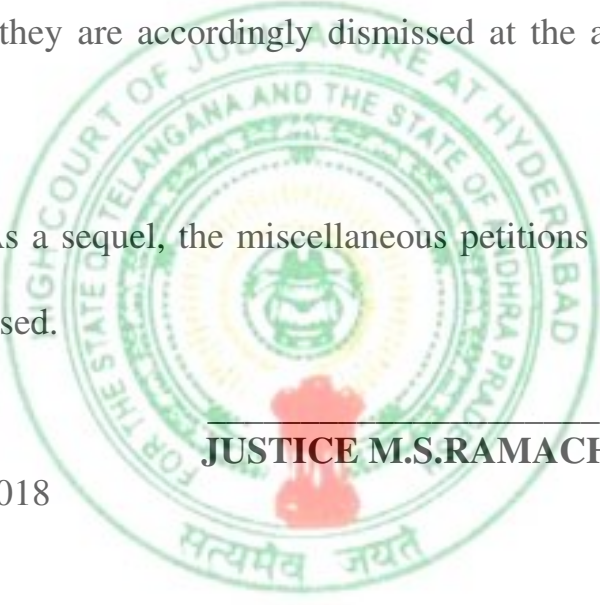
33. The order of the Court below itself reveals that the evidence of the defendants including the petitioner had been closed on 16-11-2017, that it was reopened at the instance of the petitioner who had filed I.A.Nos.757 and 758 of 2017; thereafter, the defendant Nos.7 and 13 filed I.A.Nos.805 and 806 of 2017, and again the evidence was reopened; their evidence was closed on 08-12-2017; that petitioner again filed on 12-12-2017, an I.A. to reopen suit, but did not produce any evidence and the matter was posted to 14-12-2017; at this stage, 13th defendant filed I.A.Nos.853 to 857 of 2017 and the suit was again reopened and after examination of D.Ws.1 to 3, it was again closed and posted for arguments on 20-12-2017; and then on that day, the present I.As. were filed.

34. From the above circumstances, it is obvious that the petitioner as well as 13th defendant were taking turns to reopen the matter time and again by filing applications alternately for leading further evidence.

35. The suit being of the year 2011, the petitioner cannot be allowed to drag on the proceedings indefinitely by filing such applications and procrastinate the ultimate decision in the suit.

36. In this view of the matter, I see no merit in the Revision Petitions and they are accordingly dismissed at the admission stage. No costs.

37. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 21-08-2018
kvr