

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NOS.122 to 124 OF 2014

COMMON ORDER:-

C.R.P.No.122 of 2014 is filed questioning the order, dated 11-11-2013 passed in I.A.No.885 of 2013 in O.S.No.1849 of 2008 on the file of the court of Senior Civil Judge, Ranga Reddy District at L.B.Nagar, which is filed to receive a Xerox copy of agreement of sale, dated 01-06-1993 as a secondary evidence.

2. C.R.P.No.123 of 2014 is filed questioning the order, dated 11-11-2013 passed in I.A.No.884 of 2013 in O.S.No.1849 of 2008 on the file of the court of Senior civil Judge, Ranga Reddy District at L.B.Nagar, which is filed to recall the witness.

3. C.R.P.No.124 of 2014 is filed questioning the order, dated 11-11-2013 passed in I.A.No.883 of 2013 in O.S.No.1849 of 2008 on the file of the court of Senior civil Judge, Ranga Reddy District at L.B.Nagar, which is filed to reopen the matter.

4. This court has heard Sri R.Satyanarayan Reddy, learned counsel for the petitioners and Sri M.Srikanth Reddy, learned counsel for the respondents. With their consent C.R.P.No.122 of 2014 is taken up for hearing as the

orders passed in this revision will have repercussions on the other two matters.

5. The impugned order was passed on 11-11-2013 by which I.A.No.885 of 2013 was rejected. In the said application, it is mentioned that the respondents who are the plaintiffs in the suit have executed a original agreement of sale dated 01-06-1993. The petitioners who are the defendants in the suit sought for production of the said document. The respondents have filed counter-affidavit denying the existence of the said document and also stating that if such document exists, a notice should be issued to the other side to produce the agreement and without taking appropriate steps as mandated under law, the petitioners are trying to get a Xerox copy of a document marked by way of a secondary evidence.

6. The learned counsel for the petitioners argued that by marking of this document, no prejudice will be caused to the opposite party. It is his contention that the said document has an important bearing on the matters to be decided in the suit. He also submits that the respondents are in possession of the original agreement of sale and that total consideration has already been paid and, therefore, it is necessary for this document is to be admitted in evidence.

7. In reply thereto, the learned counsel for the respondents submits that the suit is filed in the year 2008; that the evidence of the witnesses including the cross examination has been completed and when the matter is posted for arguments in the lower court, the present applications are filed. The learned counsel also points out that the sale agreement, dated 01-06-1993, is not pleaded in the written statement that is filed by the revision petitioners. Similarly, he points out that when the main witnesses PWs.1 and 2 were cross examined, absolutely no question was put about this agreement of sale. Therefore, it is his contention that the entire exercise being made is only to delay and procrastinate the trial.

8. Now, the point that arises for consideration is:-

Whether the lower court committed any error or failed to exercise its jurisdiction as warranted under law?

9. POINT:-

This court notices that the document that is sought to be produced is a Xerox copy of an agreement of sale, dated 01-06-1993. The application is also filed under Section 63 of the Evidence Act, 1872 (for short "the Act"). The petitioners are conscious of the fact that they are letting in secondary evidence. The averments in the affidavit and in the application are to the effect that this document, namely

Xerox copy of agreement of sale, dated 01-06-1993, is to be admitted as a secondary evidence of the original.

10. Section 65 of the Evidence Act clearly deals with the situations when secondary evidence relating to documents may be given. Section 65 consists of seven(7) sub-sections i.e., (a) to (g). Of these, for the present Section 65-(c) and (d) are the relevant. The most relevant sub-section is 65-(a) because according to the learned counsel for the revision petitioners, the original agreement is in the custody of the respondents/plaintiffs and that he did not deliberately produced the same.

11. When the original is shown or appears to be in the possession of the opposite party and against the person against whom the document is therefore proved, Section 66 of the Act mandates that a notice should be issued for production of the original document. In fact, Section 66 of the Act clearly states that secondary evidence of the contents of the documents referred to Section 65-A shall not be given unless the party proposing to introduce such secondary evidence has served a due notice on the opposite party. In the case on hand, admittedly no notice was served and no foundation was laid for receiving the secondary evidence and directly the present application i.e.,

I.A.No.885 of 2013 has been filed to receive the Xerox copy as a secondary evidence.

12. This court is of the opinion that the language of Sections 65 and 66, when read together, makes it mandatory that conditions specified therein have to be satisfied fully before a Xerox copy or such secondary evidence is taken in evidence. In the case on hand, it is clear that the petitioners have not acted as required under law. They have not issued the requisite notice nor did they establish the foundational facts that are necessary for receiving the secondary evidence.

13. This court also notices that the lower court in para.10 of the impugned order clearly noticed that there is no submission about the written agreement dated 01-06-1993 in the written statement. Even when PWs.1 and 2 were cross examined, there was no question about the existence of the said document. The court also noticed that the this document should be logically with the petitioners and that the petitioners have failed to make out a case of possession of the original agreement by the respondents.

14. This court finds that the order passed by the lower court is a reasoned and well thought out order. None of the essential grounds for receiving the secondary evidence are either pleaded or proved. For all these reasons, this court is

of the opinion that there are no merits in C.R.P.No.122 of 2014 and the same is liable to be dismissed. As a consequence of dismissal of C.R.P.No.122 of 2014, the other two revision petitions are also liable to be dismissed.

Accordingly, all the three revision petitions are dismissed. No costs. The interlocutory applications pending, if any, in all the revision petitions shall stand closed in consequence.

05-12-2018
TSNR

D.V.S.S.SOMAYAJULU,J

