

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION Nos.1886, 2720, 6451 & 6452 of
2017

COMMON ORDER:

The revision petitioner is defendant No.18 in O.S.No.57 of 2000 in all the 4 revisions by name Zulfikar Hussain. The revision respondents are the plaintiffs and other defendants.

2. CRP.No.1886 of 2017 was filed under Article 227 of Constitution of India against the order dated 25.01.2017 in I.A.No.391 of 2016 in O.S.No.57 of 2000, where the Tribunal has allowed the petition by reopening the suit for adducing further evidence on behalf of the plaintiffs subject to payment of costs of Rs.1,000/- to respondent Nos.15 to 19/defendant Nos.15 to 19 on or before 30.01.2017. Challenging the said order in I.A.No.391 of 2016, CRP.No.6452 of 2017 was filed subsequently under Section 83(9) of the Wakf Act, from one of the arguments raised in CRP.No.1886 of 2017 of not maintainable invoking Article 227, but for to file under Section 83 of the Wakf Act (for short 'the Act').

3. CRP.No.2720 of 2017 was filed under Article 227 of Constitution of India against the order dated 25.01.2017 in I.A.No.390 of 2016 in O.S.No.57 of 2000, where the Tribunal has allowed the petition and the documents now produced by the plaintiffs shall be received subject to proof and relevancy and subject to payment of costs of Rs.1,000/- to respondent Nos.15 to 19/defendant Nos.15 to 19 on or before 30.01.2017. Challenging the said order in I.A.No.390 of 2016, CRP.No.6451 of 2017 was filed subsequently under Section 83(9) of the Wakf Act, for the selfsame reason supra.

4. Pending suit from sole plaintiff died on 18.02.2004, the plaintiff Nos.2 to 5 were brought on record as her legal heirs and they are contesting the suit. While so, the 2nd plaintiff also died in course of time and the other plaintiffs are on record. The affidavit averments of petitioner No.4/plaintiff No.4 also on behalf of other petitioners/plaintiffs in both I.A.Nos.390 & 391 of 2016 are that the suit O.S.No.57 of 2000 was originally filed by their mother as sole plaintiff by name Zainab Begum against the 1st respondent Wakf Board and others for the relief of declaration that the Andhra Pradesh Gazette notification dated 22.01.1970 notifying the plaint schedule property as Wakf property as illegal and not binding on her and further to declare that she is the absolute owner of the plaint schedule property and for consequential relief of recovery of possession by evicting the defendant Nos.3 to 5 from the plaint schedule property. The plaint schedule property, which is part of the total extent of the land admeasuring about 36,348 $\frac{3}{4}$ square yards at Inugudurupet, Machilipatnam, which was purchased by the maternal grandfather of their mother under Ex.A1 registered sale deed dated 26.10.1922, that during his lifetime the suit property was in his possession and after his demise in the year 1926, the suit property devolved upon his two children namely Ahamad Ali Khan Saheb and Imadi Begum Saheba, that Ahamad Ali Khan Saheb died in the year 1956 as unmarried and hence, the suit property was devolved upon the mother of the 1st plaintiff, who enjoyed the plaint schedule property during her lifetime and after her death it was devolved upon the 1st plaintiff, being her only daughter. It is also averred that after purchase of the suit

property by 1st plaintiff's maternal grandfather, he constructed a building with municipal door No.26/43 and it has appurtenant land of an extent of 7224 square yards and during the lifetime of Imadi Begum (1st plaintiff's mother), the said building with appurtenant land was leased out to Government Training School for the purpose of office and play ground and the suit property which is admeasuring about 3427 square yards is part and parcel of the said appurtenant land and later said Training school was vacated and possession was handed over to the 1st plaintiff in the year 1974 and she was paying municipal tax for the building and also to the vacant land. In the year 1977, the deceased 1st plaintiff also let out the vacant land to M/s. Shanza Company which in turn sublet the same to Oil and Natural Gas Commission, that when the municipality revised the tax, the deceased 1st plaintiff filed a suit O.S.No.57 of 1978 on the file of Principal District Munsif, Machilipatnam and succeeded therein and the appeal preferred by the Municipality in that regard was also dismissed. It is averred that they failed to produce certain documents and now the petitioners/plaintiffs traced the enlisted old documents which evidently prove the facts that were stated by the deceased 1st plaintiff in the original plaint and the documents now produced are very important to exhibit to establish the title of the plaintiffs.

5. The defendant Nos.15 to 19/respondent Nos.15 to 19 filed counter to said two petitions supra opposing with the contentions that there are no grounds to reopen and receive the documents in 2016 and also for the reason previously the matter was once reserved for judgment even in the year 2006 but

because of transfer of Presiding Officer of the Tribunal it has been adjourned from time to time and there was also delay in disposing of this matter because of death of 1st plaintiff and impleading of her legal representatives, but these petitions at this stage were filed only to start another innings of litigation and there is inordinate and unexplained delay in filing the petitions. It is further contended that there was ample opportunity granted to the 1st plaintiff for adducing evidence, but these documents were not produced earlier and the documents now produced by the plaintiffs do not relate to the suit schedule property and the petitions were filed only to fill up the lacunas. It is also contended that the petitioners/plaintiffs sought the documents to receive and mark are not public documents, but they are private and created documents and not even related to the suit property and sought for dismissal of the petitions for no grounds to receive the documents and permit further evidence.

6. The learned Presiding Officer on 25.01.2017 allowed the petitions by separate orders to receive the documents and reopened the suit for further adducing of evidence on behalf of the plaintiffs. Impugning the same, the present revisions are maintained.

7. The grounds of the revisions vis-à-vis oral submissions of the learned counsel for the revision petitioner/defendant No.18 are that the whole approach of the court below in allowing I.A.Nos.390 & 391 of 2016 is without appreciating the submissions made on behalf of defendant Nos.15 to 19 and the same are liable to be declared as nothing but perverse and the court below ought to have dismissed the I.A.s by recording a

finding that the plaintiffs not entitled to reopening of evidence and the documents cannot be brought on record at the fagend of the trial. It is contended that the observation of the court below that the explanation for the delay given by the plaintiffs for not filing the documents earlier is that “because of the demise of the deceased 1st plaintiff, these documents could not be produced is as if a satisfactory reason to adduce further evidence”, whereas in the affidavit filed in I.A.s, the deponent came with a contra version that “recently, he has traced out enlisted old documents, which evidently prove the facts” and “enlisted old documents are very important and essential for better adjudication of the matter” and as such, the reason given by the Court below is not sustainable under law. It is further contended that the court below has took pains to order IA by writing a judgment into 12 pages, but it has not accepted the reason given by the respondent/plaintiff filed along with I.A.s and as such, the impugned orders are liable to be set aside as outcome of non application of judicious mind. It is also contended that the court below ought to have considered the objection raised by defendant Nos.15 to 19 that allowing the applications would fill up the lacunas in the evidence, which is not permissible in the eye of law and sought for allowing of the revisions by setting aside the impugned orders of the Court below by dismissing the petitions.

8. Whereas it is the submission of the learned counsel for the respondents/plaintiffs that the persons opposing these petitions are only lessees under the Wakf Board and not even the Wakf Board and they have no paramount interest in the lis and thereby they cannot oppose the petitions and the orders of the

lower Court hold good and for this Court while sitting in revision there is nothing to interfere with the trial Court's orders allowing the petitions. It is also impugned the non-maintainability under Article 227 of Constitution of India and the filing of the subsequent petitions even by invoking Section 83(9) of the Act and thereby all the 4 revisions are to be dismissed.

9. Heard and perused the material on record.

10. Before coming to the factual aspects and other merits, now coming to the first contention of the revision petitioner is lessee under the Wakf Board and not even the Wakf Board and has no paramount interest in the lis to oppose the plaintiffs petition to reopen their evidence and the plaintiffs petition to receive the documents and that too to maintain revision against allowing the same by the lower Court concerned; Undisputedly the revision petitioner is one of the defendants to the suit under contest, any defendant can oppose by filing counter and any defendant aggrieved by the order can maintain revision. Once remedy is available even from the saying by revision respondents/plaintiffs of Section 83(9) of the Act provides for High Court's power to entertain revision to invoke by a party aggrieved. Thus the revision petitioner as defendant to the suit and respondent to the 2 petitions got statutory right to oppose by filing counter and also right to maintain revisions and the revision respondents/plaintiffs have no locus to question their locus standi. Thereby the revisions are maintainable and the contention questioning their locus is unsustainable and rejected.

11. Now coming to the other contention of CRP.Nos.1886 & 2720 of 2017 won't lie under Article 227 of Constitution of India,

but for under Section 83(9) of the Act and so far as CRP.Nos.6451 & 6452 of 2017 filed under Section 83(9) of the Act wont lie because of earlier petitions pending and not withdrawn before its filing subsequently concerned, even mere wrong quoting of a provision as per the settled law not fatal to the maintainability of the revisions for the Court can treat as filed under correct provision of law irrespective of objection taken or not even before its final disposal as the case may be. Thus CRP.Nos.1886 & 2720 of 2017 can be treated as filed also under Section 83 of the Act.

12. Leave it apart, coming to Article 227 of the Constitution of India, the power to exercise despite alternative remedy by some other provision available is not fatal. In this regard, this Court in **A.P. Arya Vysya Mahasabha, Nizamabad District Vs. Mutyapu Sudershan**¹ held that irrespective of maintainability of the appeal under CPC against the exparte ad interim injunction the High Court under Article 227 of the Constitution of India, within plenary jurisdiction and superintendence power of the Courts and Tribunals through out the territories in relation to which it exercise jurisdiction can entertain and pass orders.

13. Even leave it apart, the fact that the earlier revision petitions pending and when sought for withdrawal was opposed when it could not be disputed even from the subsequent filing of the 2 other revision petitions for the same relief is only thereby with different provisions of law. Once that cannot be suppressed because the matters are before the Court there is nothing to say that there was any suppression of earlier matters in filing the subsequent revisions, but for all the 4 revisions to take up

¹ 2015 (5) ALD 1

together and to decide besides what is referred supra of the first two revisions themselves to read as also filed under Section 83(9) of the Act and Article 227 of the Constitution of India from any non or misquoting of provision even no way fatal, for not even a case of there is any different proforma and procedure to maintain revisions under Section 83 of the Act or any contra distinction under Constitution of India, but for the only difference so far as the exercise of the revision jurisdiction is there is no question of application of the Indian Limitation provisions like the prescribed period for Section 83(9) revision petition under the Wakf Act like for Section 115 CPC to Article 227 of the Constitution of India. The law is clear from the Division Bench expression of this Court by scanning the law in **Dr. K.Subramanyam Reddy Vs. Sri Venkateswara University**². Even in the recent expression of the two Judge Bench expression of the Apex Court in **Bithika Mazumdar Vs. Sagar Pal and Others**³ it is clearly held that there is no period of limitation prescribed for filing petitions under Article 227 of Constitution of India and even a petition has been filed with some delay and explained to consider the petition can be entertained for the period of limitation applicable to revision under Section 115 CPC is inapplicable to petition under Article 227 of Constitution of India.

14. Apart from it on the scope of Article 227 of the Constitution of India by clarifying legal position on reference with reference to the 2 earlier expressions in **Surya Dev Rai Vs. Ram Chander Rai**⁴ and Constitution Bench expression of the Apex

² 1995 (3) ALT 386 (DB)

³ 2017 (2) SCC 748

⁴ 2003 (6) SCC 675

Court in **Naresh Shridhar Mirajkar Vs. State of Maharashtra**⁵
in **Radhey Shyam Vs. Chabbi Nath** dated 26.02.2015 in Civil
Appeal 2548 of 2009 observed as follows:

"3. As already mentioned, the Bench of two Hon'ble Judges who heard the matter was not persuaded to follow the law laid down in Surya Dev Rai. It was observed that the judgment in Surya Dev Rai did not correctly appreciate the ratio in the earlier Nine Judge judgment of this Court in Naresh Shridhar Mirajkar and others vs. State of Maharashtra[2] wherein this Court came to the conclusion that "Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction (para 63)". With reference to the observations in Surya Dev Rai for not following the conclusion in Mirajkar, the referring Bench inter alia observed:

"25. In our view the appreciation of the ratio in Mirajkar by the learned Judges, in Surya Dev Rai, with great respect, was possibly a little erroneous and with that we cannot agree.

26. The two-Judge Bench in Surya Dev Rai did not, as obviously it could not overrule the ratio in Mirajkar, a Constitution Bench decision of a nine- Judge Bench. But the learned Judges justified their different view in Surya Dev Rai, inter alia on the ground that the law relating to certiorari changed both in England and in India. In support of that opinion, the learned Judges held that the statement of law in Halsbury, on which the ratio in Mirajkar is based, has been changed and in support of that quoted paras 103 and 109 from Halsbury's Laws of England, 4th Edn. (Reissue), Vol. 1(1). Those paras are set out below:

"103. The prerogative remedies of certiorari, prohibition and mandamus: historical development.-Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review

⁵ AIR 1967 SC 1 = 1966 (3) SCR 744

or to remove indictments for trial in that court; mandamus was directed to inferior courts and [pic]tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs;...

* * *

109. The nature of certiorari and prohibition.-Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

The aforesaid paragraphs are based on general principles which are older than the time when *Mirajkar* was decided are still good. Those principles nowhere indicate that judgments of an inferior civil court of plenary jurisdiction are amenable to correction by a writ of certiorari. In any event, change of law in England cannot dilute the binding nature of the ratio in *Mirajkar* and which has not been overruled and is holding the field for decades.

27. It is clear from the law laid down in *Mirajkar* in para 63 that a distinction has been made between judicial orders of inferior courts of civil jurisdiction and orders of inferior tribunals or court which are not civil courts and which cannot pass judicial orders. Therefore, judicial orders passed by civil courts of plenary jurisdiction stand on a different footing in view of the law pronounced in para 63 in *Mirajkar*. The passage in the subsequent edition of Halsbury (4th Edn.) which has been quoted in *Surya Dev Rai* does not show at all that there has been any change in law on the points in issue pointed out above.

28. The learned Judges in *Surya Dev Rai* stated in SCC para 18, p. 687 of the Report that the decision rendered in *Mirajkar* was considered by the Constitution Bench in

Rupa Ashok Hurra v. Ashok Hurra and wherein the learned Judges took a different view and in support of that, the following para from Rupa Ashok Hurra has been quoted: (Surya Dev Rai case, SCC pp. 687-88, para 18) "(i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High [pic]Courts are not constituted as inferior courts in our constitutional scheme."

29. We are constrained to point out again that in Rupa Ashok Hurra the Constitution Bench did not take any view which is contrary to the views expressed in Mirajkar. On the other hand, the ratio in Mirajkar was referred to with respect and was relied on in Rupa Ashok Hurra. Mirajkar was referred to in SCC para 8, p. 399 and again in SCC para 11 on p. 402 and again in SCC para 59, p. 418 and also in SCC para 60, p. 419 of Rupa Ashok Hurra. Nowhere even any whisper of a divergence from the ratio in Mirajkar was expressed. Rather passages from Mirajkar have been quoted with approval.

30. In fact the question which was referred to the Constitution Bench in Rupa Ashok Hurra is quoted in para 1 of the judgment and it is clear from the perusal of the said paragraph that the question for consideration in Rupa Ashok Hurra was totally different. Therefore, this Court unfortunately is in disagreement with the view which has been expressed in Surya Dev Rai insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned."

4. Thus, the question to be decided is whether the view taken in Surya Dev Rai that a writ lies under Article 226 of the Constitution against the order of the civil court,

which has been doubted in the reference order, is the correct view.”

15. Thus from the above referring sub Para 109 of the Halsbury's law of England 4th Edition and the Apex Court's Constitution Bench Expression in **Rupa Ashok Hurra Vs. Ashok Hurra**⁶ deferring with the ratio laid down in the earlier constitution bench in **Mirajkar** by holding the view expressed by **Surya Dev Rai** relied upon **Rupa Ashok Hurra** is the correct view and nature of certiorari and prohibition respectively lie to bring decisions of an inferior Courts or Tribunal or Public Authority or any other body or persons before the High Court to determine whether to quash or not in certiorari and whereas in prohibition to issue an order by High Court and direct inferior courts or Tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law and thus both are employed for control of inferior courts or tribunal or public authorities **even**. It is therefrom at Para 4 of **Radhey Shyam supra** the Constitution Bench observed that thus the question in so answering on the question covered by Para 4 supra referring to catena of expressions including Halsbury's case and the case of law of the High Court's Privy Council and the Supreme Court and the Foreign Courts observed ultimately at Paras 21 to 23 as follows that irrespective of the power of revision under Section 115 CPC, the jurisdiction of the High court under Article 227 remains unaffected and judicial orders of civil courts are not amenable to writ of certiorari under Article 226, but the scope of Article 227 is different to Article 226 thereby revision

⁶ 2002 (4) SCC 388

under Article 227 lies and the said expression for more clarity from the said Paras is extracted below:

“21. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all other courts having limited jurisdiction subject to supervision of King's Court. Courts are set up under the Constitution or the laws. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

22. The Bench in Surya Dev Rai also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain

quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh and another vs. Amarnath and anotherst, Ouseph Mathai vs. M. Abdul Khadir[12], Shalini Shyam Shetty vs. Rajendra Shankar Patil[13] and Sameer Suresh Gupta vs. Rahul Kumar Agarwal[14].”

16. From the above even from reading of Section 83(9) of the Act it speaks no appeal shall lie against any decision or order whether interim or otherwise given or made by the Tribunal. Provided that the High Court may on its own or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit. There is no non-absentee clause. Thereby this provision under Section 83(9) of the Act no way takes away the High Courts jurisdiction under Article 227 of the Constitution of India. From the above all the 4 revisions are thereby taken up together for disposal of the earlier two revisions may otherwise be sufficient by treating those under Section 83 of the Act read with Article 227 and the subsequent two petitions to treat as additional pleading to the earlier with correct provision of law for all purposes.

17. Therefrom coming to the merits of the matter with reference to other facts and law, undisputedly the original sole plaintiff by name Zainab Begum, before she passed away on 18.02.2004, was examined way back as PW.1. Her chief

examination was recorded by the advocate commissioner starting from 16.02.2002 which was running in 4 ½ pages referring to 32 exhibits to say nearly 2 years after the suit O.S.No.57 of 2000, leave about another suit O.S.No.165 of 2000 filed, her cross examination was also recorded by the Commissioner from page 5 continuation that all of her deposition is running into 13 ½ pages in its conclusion. Defendant Nos.1, 2 & 5 cross examined her, leave about any other defendants not done specifically are entitled to adopt the same or to rely on it and page 14 of the said typed deposition certified copy obtained from the Tribunal shows that there was no any re-examination. Once it was completed way back in the year 2002 her evidence as PW.1 running in 14 pages and in her lifetime till 2004 she did not seek her recall much less by filing any more documents other than the 32 exhibits placed reliance and that too when evidence of plaintiffs closed long back and the plaintiffs 2 to 5 even came on record as LR's of sole plaintiff undisputedly sometime after her death on 18.02.2004 can it be permitted to file applications in the year 2016 for having they waited for 12 years after came on record to continue the proceedings and on behalf of the late 1st plaintiff's LR's later for other plaintiffs among 3 to 5 since 2nd plaintiff also died and if so by receiving of more than one chief affidavit and several documents.

18. The affidavit of the 5th plaintiff one of the LR's of the sole plaintiff in the petitions covered by the impugned orders, in I.A.Nos.390 & 391 of 2016 to reopen the evidence and to receive the enlisted documents, it is averred that they came on record as LR's of her late mother sole plaintiff, as plaintiffs 2 to 5/6, since

died on 18.02.2004 pending the suit filed with the claim of she is absolute owner of the suit schedule property purchased by her maternal grand father Suleman Ali Khan Bhadur with alleged acts of possession since then with right by him and his successors in interest including by her as sole plaintiff including by letting out to defendant Nos.3 to 5, also filing of LGOP.No.88 of 1983 by claiming the property as wakf by 2nd defendant Wakf of Chehilum Astana against defendant Nos.3 to 5 from which she cause impleaded as respondent No.8 to LGOP.No.88 supra that was ultimately allowed in favour of the 2nd defendant herein as LGOP petitioner and against the land grabbing Court judgment, LGA.No.4 of 1995 filed and asked the parties to approach the civil court to establish title over the property, which made to question the so called Gazette No.4 dated 22.01.1970 and for declaration of title by their mother in filing of the suit. With these averments up to Para 12 of the affidavit no way require repetition. It is stated in few lines from Paras 13 to 15 of the affidavit as follows:

“13. I submit that recently I have traced out enlisted old documents which evidently prove the facts the plaintiff No.1 was exercising the absolutely owners over the suit property and prior to her, her predecessors in title namely Imadi Begum, Nawab Ahmed Ali Khan Bhadur and late Nawab Suleman Ali Khan Bhadur etc have all exercised their right over the suit property.

14. I submit that the said enlisted old documents are very important and essential documents for better adjudication of the matter before this Hon'ble court. Since the said old documents are traced out recently therefore there is no delay in whatever manner for non filling of the said enlisted documents before this Hon'ble court. No prejudice would cause to the respondents in any manner if the said documents are received on record on behalf of the petitioners herein.

15. I submit that in view of the tracing out of the old documents which would have great bearing on the crux of the above manner, therefore it is just and necessary that the evidence of the plaintiff is required to be re-opened to adduce further evidence on behalf of the plaintiffs.”

19. From the above it is averred by the 4th plaintiff on behalf of the petitioners that recently he has traced out listed old documents to prove the facts that 1st plaintiff was exercising ownership over property and prior to her, her predecessors in title and said old documents are important and essential and there is no delay in its non-filing earlier and no prejudice caused to the respondents/defendants from receiving of the documents and reopen the plaintiff's evidence. The affidavit is as vague as anything from Paras 13 to 15 supra, as to when traced, how traced and where traced to him all of a sudden which are crucial not even mentioned how those are relevant in addition to what is the evidence of sole plaintiff whose evidence closed in March 2002 prior to her death in February 2004 and even these plaintiffs are her LRs came on record in 2004 or so having not chosen to adduce any evidence by reopen their evidence all through for about 12 years.

20. The counters filed in opposing the petitions by respondent Nos.15 to 19 are while denying the averments and the contentions on merits in support of their written statement contest and evidence on record from their side including as to the entitlement of the relief by sole plaintiff by stepping into her shoes by other plaintiffs being LRs particularly from Paras 8 to 16 of said documents and reopen petition supporting affidavit averments are untrue and false and there are absolutely no

grounds to reopen the matter when the matter is reserved for judgment a decade ago in 2006 itself and since then for transfer of the presiding officer or otherwise the matters are coming from that stage of the suit is pending for more than 16 years from the year 2000 to the date of filing of the petition in seeking opportunity to adduce further evidence by reopening the closed evidence way back in 2002. It is also the contest that those documents are not related to the lis and otherwise cannot be permitted to fill up the gaps and lacunas after evidence of defendants also closed decade back and the reasons assigned cannot be called valid and they did not approach the Court to reopen and to receive documents with clean hands nor it is necessary to take the recourse sought for even by the Court. It is also contended that among the so called additional evidence documents, document Nos.1, 3, 23 & 24 are not public documents and the certified copies of the documents are inadmissible in evidence and the affidavit filed in support of the petition no way accounts for the reason for non-production of originals and even coming to the document Nos.2, 5, 6, 7, 10, 13 to 15 those are created to support the contention of the plaintiffs and they are self served documents and cannot be received besides no way relevant and admissible to the subject matter of the lis. It is also contended that so far as other documents 8,9,11,12, 16 to 22, they no way relate to suit property and not at all relevant and they are pressed into service to support the false contentions if possible. It is contended ultimately all these petitions are vexatious or frivolous and to drag on the proceedings and liable to be dismissed.

21. In the separate impugned orders of the lower Court of even date it is observed that certified copies of the registered sale deeds, registered GPA, registered indemnity bond, original agreement of compromise, original notice of property tax issued by municipality besides vacant land tax receipts and notices and original decree in O.S.No.57 of 1978 and proceedings of Regional Deputy Director of Public Institutions, the reason for delay was in obtaining certified copies because of transfer of the officers of the Tribunal, death of some of parties and impleadment of legal heirs, which is satisfactory in the considered opinion of the trial Court.

22. As referred supra in the affidavit the only reason given is those documents are recently traced is the version, whereas the impugned orders speak as if reason for delay is delay in obtaining certified copies or transfer of the officers of the Tribunal or death of some of the parties and impleadment of legal heirs, the impugned orders of the lower Court are thereby without application of mind to the pleadings and the affidavit averments respectively in mechanically passing the order for not even the contentions specifically reproduced of additional ground if at all that was to say for not borne by petition affidavit averments to travel beyond in passing the orders. Further so far as receiving of the chief affidavit concerned, there is no bar for receiving of the chief affidavit of PW.2 if at all to permit for not the chief affidavit of witness already examined by recall as additional chief affidavit to say such recourse is a bar. The law is very clear from the expression of the Apex Court in **Salem Advocate Bar Association, Tamilnadu Vs. Union of India**⁷ of chief affidavit of

⁷ 2002 Supp(3) SCR 353

a witness can be filed and where such witness not chosen to give chief affidavit, the Court can record his chief examination in such contingency by interpreting Order 18 Rules 4 & 5 CPC. However so far the merits of the order from the above as rightly contended in the grounds of revision, the explanation for filing of the documents and seeking reopen is to exhibit those documents and as if which is before filing of the petition by vaguely saying recently those documents all of a sudden traced to the deponent is hardly believable of several documents how, when and where those lie and how traced. Coming to the expressions placed reliance by both sides in **L. Srinivasa Rao @ Venkateswarlu Vs. L.Sivaiah** in CRP.Nos.2939, 3001 & 3067 of 2015 dated 31.07.2015 of learned Single Judge of this Court though no elaborate reasons were assigned by the plaintiff for production of documents after closure of the evidence, once the affidavit Para 2 in support of the petition pleaded that the documents proposed are now available and from the Court on facts came to the conclusion of the party is innocent and illiterate and could not find those documents while filing the suit and the lower Court dismissed in receiving the documents which are tax receipts and electricity bills in the suit for injunction based on possession in reference to the acts of possession and Courts must lean to do substantial justice rather than procedural and technical violations, Court can also where the documents are essential for proper and effective adjudication of the disputes where no prejudice caused to the adverse party can permit and once the order of the lower Court is by sound reason there is nothing to interfere by sitting in revision. In the above expression the lower

Court's order is as referred supra is detailed and convinced from the facts of its own and thereby the revision Court not chosen to interfere.

23. As discussed supra in the case on hand, the very order is outcome of non-application of mind and reasons assigned are contrary to the facts pleaded. In fact the very expressions in **L.Srinivasa Rao** supra referred to the earlier judgments of this Court more particularly in **C.Rama Mohan Reddy Vs. Kusetty Seshamma and Others**⁸ and **M.R.Anjaneyulu Vs. R.Subramanyam Achary**⁹ where it was observed that in the documents petition of the plaintiff to receive belatedly from earlier non-filing of unless he puts forth convincing reasons, the Court cannot allow him to file the documents at a later stage and the same is unexceptionable. Thus even the law laid down earlier and referred therein shows the explanation of party with reference to the facts must be there showing sufficient cause for earlier non-production and not to receive as a matter of course for mere asking, without any convincing reasons for the earlier non-filing.

24. Needless to say a stray sentence of just before filing petition the documents are found or traced not sufficient without further as to when, where and how traced or received for the belated filing that too more than 14 years after plaintiff's evidence is closed and more than 10 years after evidence of both sides closed and more than 12 years after filing of the petition to bring on record as LR of sole plaintiff and came on record to file these petitions in seeking to reopen the matter. Coming to the other

⁸ 2012 (4) ALD 96

⁹ 2012 (5) ALD 243

decision in **John Santiyago Vs. Clement Dass**¹⁰, it is observed referring to earlier expression of this Court in **Bada Bodaiah Vs. Bada Lingaswamy and Others**¹¹ that from reading of Order 7 Rule 14 and Order 8 Rule 1-A CPC, it would show that party shall produce and Court shall receive documents produced on or before settlement of issues if copies thereof filed along with plaint or written statement and later no power to receive. However these provisions empower the Court to give permission or leave to plaintiff or defendant to produce documents at a subsequent stage and these provisions to be read together harmoniously to exercise the sound discretion judiciously with regard to facts and circumstances. For that to exercise the power by Court even mere non-mention of documents sought to be produced at a later stage no way fatal, however the power to be exercised must be in rare cases and not as a matter of routine for asking as sufficient cause must be shown for the earlier non-filing and for the belated filing with reference to the facts and circumstances to ascertain cause is sufficient or not in the judicial discretion to exercise. Even this decision clearly speaks unless there is a sufficient cause for mere asking documents cannot be received and the Court shall judiciously exercise the discretion to receive even those filed belatedly if there is a sufficient cause for earlier non-filing and for the belated filing in coming to a conclusion with reference to the facts and circumstances and such discretion to exercise in rare case and not as a matter of mere asking to receive much less without sufficient cause. Coming to the other decision of the Apex Court in **Rukkaiyabibi Ahmed Ali Ismail and Others**

¹⁰ 2014 ALT (3) 83

¹¹ 2003 ALD (1) 790

Vs. Musa Ismail Mahmed Khusal and Others¹² where after closure and the matter at arguments stage are kept for judgment application filed to bring on record certain documents stating those were described in the circumstances mentioned in the petition filed before the trial Court by seeking reopen the evidence and to examine the evidence, the trial Court rejected both the petitions of those documents are not covered by any pleadings nor earlier chosen to produce but for sought to be introduced by seeking reopen and the High Court dismissed the revision confirmed the trial Court's order and the matter when went before the Apex Court it is observed that the affidavit petition very clearly disclosed the facts regarding the submission of the documents and it is basically in seeking permission to receive by reopen the evidence to adduce that was not properly appreciated and that too without authenticity of documents questioned much less by any counter or appearance despite service of notice thereby allowed to receive the documents allowing of appeal before the Apex Court. That facts no way applicable to the case on hand for more particularly in the case on hand, it is one of the disputes that most of the documents particularly referred with document numbers are created, false and fabricated for purpose of suit of late and cannot be received those forged and fabricated documents apart from no explanation for belated filing and no reason to believe when traced, how traced and where traced to say as if recently traced of several documents to reopen the evidence at the arguments stage for more than a decade. Thus so far as receiving of the documents concerned as referred supra in

¹² 2014 (16) SCC 422

the affidavit petition, but for simply saying recently traced of several documents it is not mentioned where traced, when traced and how traced and of those public documents or private documents if at all earlier where lies and when secured, mere stray sentence is not enough to receive the documents for plaintiff/PW.1 evidence closed in 2002 March itself during her lifetime and even after her death in February 2004 and the other plaintiffs, LRs of sole plaintiff came on record and never whispered anything of the matter coming for arguments since 2006 by filing any petition to reopen their evidence or to receive the documents, but for the first time in 2016, the allowing of the petitions mechanically by the lower Court to receive several documents that too on a stray sentence as if documents recently traced, and that too when it is the contention specifically of certain documents are forged and fabricated and recently created for purpose of the lis, the allowing of the petitions other than the certified copies of the public documents is unsustainable. In fact in the counters of the respondents before the lower Court particularly Paras 12 to 14 clearly mentioned of document Nos.1, 3, 23 & 24 certified copies of the documents and not originals if at all relevant to receive and the others are neither relevant nor admissible and all are created and fabricated and cannot be allowed to press into service all those from the vain attempt to support the false claim.

25. Having regard to the above, but for documents Nos.1,3,23 & 24 the other documents allowed by the lower Court are unsustainable in I.A.No.391 of 2016 but for to receive those documents and any objections for its marking for original or not

even no doubt subject to objection regarding proof, relevancy and admissibility as held in **Bipin Shantilal Panchal Vs. State of Gujarat**¹³. So far as the reopening of the evidence concerned pursuant to the receiving of the documents the same can be allowed only for the limited purpose supra and not beyond if at all.

26. Even in **G.Sanjeeva Reddy Vs. Indukuru Lakshamma and Others**¹⁴ where sole plaintiff died and Lrs brought on record and one of the legal representatives/plaintiffs filed application 9 years after brought on record seeking leave to file certified copy of 10(1) revenue record and trial already commenced though documents on which plaintiffs seek to rely must be filed with plaint and otherwise reasonable cause must be shown for bringing on record subsequent to that and leave of Court is not mechanical as exercise of the discretion is circumscribed by legal principles and a negligent litigation cannot be protected by judicial orders and in the case on hand when original plaintiff not taken any steps to file said documents, the impleaded 3rd plaintiff seeking leave to produce 9 years after impleadment without any reasonable shown for delay the document petition is liable to be rejected is the conclusion also by referring to **B.Bodaiah supra**.

27. In **Vadiraj Naggapa Vernek (D) through LRs. Vs. Sharad Chand Prabhakar Gogate**¹⁵ it was observed that the power of the Court to recall and examine any witness is to be exercised sparingly and not as a general rule merely on the

¹³ AIR 2001 SC 1158

¹⁴ 2006 (3) ALT 66

¹⁵ 2009 (3) ALT 25 (SC)

ground of asking for it will not cause prejudice to the other parties nor the power to be exercised to fill up the lacunas of the witness of their side or of the other side to cover up therefrom later though it is the discretion of the Court thereby to exercise sparingly and judiciously and not as a matter of course. The same is reiterated in **Ram Rati Vs. Mange Ram (D) through LRs**¹⁶ of any attempt to fill up omissions or lacunas in the earlier evidence already let in either for further elaboration on left out points or otherwise cannot be exercised for the orders to be passed is to sub serve the ends of justice for reopening the evidence either for further examination of any witness or recall or re-examine of any witness of already examined for such a judicial discretion to be exercised sparingly and not as a matter of course and the earlier expressions in this regard in **Vadiraj Naggappa Vernekar supra, K.K. Veluswamy Vs. N.Palanisamy**¹⁷ and **Bagai Construction Vs. Gupta Building Material Store**¹⁸. Thus any mere observation of no prejudice is caused to the other side is not even enough in the absence of parameters required to be fulfilled to reopen the evidence or to recall of any witness or examination of further witness likewise without reasons in the affidavit for the belated filing and earlier non-filing and without sufficient cause to receive documents thereby the impugned order of the lower Court in reopening and recall of witness is unsustainable, but for only in relation to the 4 documents supra for which it is not in dispute by saying fabrication, forgery or created and that too those are

¹⁶ (2016) 11 SCC 296¹⁷ 2011 (11) SCC 275¹⁸ (2013) 14 SCC 1

certified copies of the sale deeds or decree of Court as the case may be.

28. Accordingly and in the result, the petition to receive is allowed to the extent of the certified copies of the decree or judgment or order of the Court and certified copy of any registered sale deed or other documents and not otherwise and whatever the chief examination of PW.2 received by 2 affidavits is since impermissible so also the cross examination pending disposal of these revisions same is treated with no value for all practical purposes by permitting now to confine to the PW.2 chief examination with reference to marking of those documents to receive by the lower Court which are certified copies of the court orders or decrees and registration extracts of the registered document obtained by the Sub Registrar to receive and exhibit through PW.2 by permitting evidence only to that extent.

29. Accordingly and in the result, CRP.Nos.1886 & 2720 of 2017 are allowed by treating the same filed also under Section 83 of the Act and by consequently closing CRP.Nos.6451 & 6452 of 2017 and by setting aside the orders of the lower Court to receive all documents however by remanding the matter to the lower Court of I.A.Nos.390 & 391 of 2016 to receive the documents which are certified copies of the Court decrees and orders and the registration extracts of the sale deeds or other registered documents only and no other documents and by treating the evidence of PW.2 already on record by 2 chief affidavits and further cross, if any, with no value by demarking the documents with a direction to the Tribunal to re-exhibit only the documents referred supra by recording the evidence of PW.2 afresh only

confining to the referring of only such of the documents in chief and to permit the cross examination in relation thereto.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.01.2018
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