

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3321 of 2018

ORDER:

This civil revision petition is filed by the petitioner-defendant under Article 227 of the Constitution of India assailing the order dated 23.04.2018 passed in I.A.No.638 of 2018 in O.S.No.833 of 2012 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for the petitioner and Sri K.V.L.Jayasimha, respondent – party-in-person.

3. A perusal of the record reveals that the respondent as a party-in-person filed O.S.No.833 of 2012 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad, against the petitioner for declaration, recovery of possession and perpetual injunction in respect of the suit schedule property. Pending suit, the respondent-plaintiff filed I.A.No.638 of 2018 under Order XI Rule 14 CPC seeking direction to the petitioner-defendant to produce certain documents. The trial Court, after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. Learned counsel for the petitioner submitted that the trial Court failed to consider the scope of Order XI Rule 14 CPC and allowed the petition on untenable grounds. He further submitted that when the certified copies of documents are before the Court, there is no need to produce the originals of the said documents. Per contra, the respondent-party-in-person submitted that the trial Court rightly considered the scope of Order XI Rule 14 CPC and

allowed the petition. He further submitted that no prejudice would be caused to the petitioner even if the petition is allowed.

5. Now, the point that arises for consideration in this revision is, whether there is any illegality, irregularity or impropriety in the orders of the Court below?

6. To substantiate the arguments, the respondent – party-in-person drawn the attention of this Court to the following decisions:

1. ***Vysya Bank Ltd., Bangalore v. B. Seetharamaiah,***

wherein it was held at para No.13 as follows:

“13. The present application made by the respondent was under Rule 14 of Order 11 which is as follows:

“14. Production of documents:-It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just”.

Under this Rule, the Court is conferred discretion to order the production of documents by any party but this discretion is hedged by two conditions to be satisfied-(i) such documents should be in possession or power of the party required to produce them; and (ii) such document should relate to any matter in question in the suit : it is in respect of such documents that the Court should think right to order their production. Even though the first condition is satisfied in the present case, the impugned order of the learned Subordinate Judge does not disclose that he applied his mind as regards the satisfaction of the second condition.”

2. ***United India Insurance Co.Ltd., Hyderabad v. Y.***

Adilakshmi, wherein it was held at paras No.18 and 20 as follows:

“18. Coming to the facts of this case, when there is a dispute as to the Insurance Company with which the vehicle was insured on the date of the accident and when the petitioner herein which is also one of the Insurance Companies approaches the tribunal with an application seeking a direction to another Insurance Company to produce certain documents which appears to be material and necessary for the purpose of deciding the main issue

of fastening the liability on the Insurance Company, the Tribunal ought to have considered the facts and circumstances of the case and ought to have considered that those documents were necessary for deciding the main controversy and the tribunal ought to have considered that the matter was already pending since more than 4 years and ought to have allowed such application instead of rejecting it on a technical ground. Moreover, the reason assigned by the Tribunal is not correct and a party to a suit or any claim petition, has every right to approach a Civil Court or Tribunal under Order 11 Rule 14 C.P.C. seeking a direction to other party for producing necessary documents.

19. Order 11 Rule 14 C.P.C. reads as follows:

“It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”

20. The above referred rule does not prevent a party from making an application for production of the documents. Of course, it is for the Court to decide as to whether such document is required or not and whether it is necessary for deciding the issue involved in the matter or not. Having regard to the facts and circumstances of the case and also the contention of the Insurance Company, I am of the view that the Tribunal ought to have exercised its power and ought to have directed the 9th respondent-Assurance Company Limited to produce those documents.”

7. As per the principle enunciated in the cases cited supra, the Court can direct one of the parties to the proceedings, who is in custody of documents, to cause production of the documents in view of Order XI Rule 14 CPC.

8. Let me consider the facts of the case on hand in the light of the above legal principle.

9. It is not in dispute that the respondent as a party-in-person filed the suit for declaration, recovery of possession and consequential perpetual injunction in respect of the suit schedule property. It is a settled principle of law in a suit for declaration the plaintiff may succeed or fail basing on the strength or weaknesses

of his case. It is needless to say that the plaintiff is not entitled to the relief of declaration basing on the lacunae or latches, if any, on the part of the defendant. In the instant case, the plaintiff has to prove his case by preponderance of probabilities. Once the plaintiff *prima facie* establishes his case, the onus of proof shifts on to the defendant to establish her stand. It is the case of the respondent that he purchased the suit schedule property in the name of the petitioner. It is not in dispute that the title deed stands in the name of the petitioner. Whether it is a benami transaction or not has to be decided at the time of full fledged trial. While deciding the interlocutory applications, the Court shall not express any opinion touching the merits of the main case.

10. The underlying object of Order XI Rule 14 CPC is to cause production of the documents, which are in the custody of the opposite party. The person, who files the petition under Order XI Rule 14 CPC has to establish that the production of such documents certainly will throw some light on the controversy involved in the suit. In the instant case, the respondent filed the petition under Order XI Rule 14 CPC to cause production of (1) Original permission of GHMC dated 03.10.1998, (2) Original regularisation of GHMC dated 29.01.2011, and (3) Original sale deeds.

11. At the time of arguments, learned counsel for the petitioner and the respondent party-in-person, in one voice, submitted that the certified copies of registered sale deeds, original of which sought to be produced, were marked as Exs.A22, A23 and A24. The original regularisation of the GHMC dated 29.01.2011 was

also marked as Ex.A12. The remaining document is original permission of GHMC dated 03.10.1998. It is not the case of the petitioner that she is not in custody of that document. It is needless to say that a person, who is in custody of a document intentionally and wilfully fails to produce the same before the Court, the Court can draw an adverse inference under Section 114 of the Indian Evidence Act.

12. Whether non-production of the GHMC permission order dated 03.10.1998 itself is a sufficient ground to draw an adverse inference against the petitioner or not will be decided at the time of full-fledged trial. If this Court expresses any opinion touching the merits of main case, it may cause prejudice to one of the parties to the proceedings. Therefore, it is left open to the trial Court whether to draw adverse inference or not so far as production of original permission of GHMC dated 03.10.1998 is concerned.

13. There is no doubt the proposed documents will throw some light on the controversy involved in the suit. For one reason or other, the respondent himself filed the certified copies of registered sale deeds, which were marked as Exs.A22, A23 and A24. The respondent also produced the certified copy of regularisation of GHMC dated 29.01.2011 and the same was marked as Ex.A12. It is not the case of the respondent that there are some interpolations in the certified copies filed by him. It is a known fact that no government official issues a certified copy without the original document. The certified copies produced by the respondent are replica of the original documents, so far as the recitals and other aspects are concerned.

14. The learned counsel for the petitioner and the respondent in-person submitted that Exs.A12, A22, A23 and A24 were marked without any objection. In such circumstances, the Court can adjudicate the issue involved in the suit basing on Exs.A12, A22, A23 and A24 even in the absence of production of original documents. Production of original documents in this case is only an empty formality. The trial Court has not considered the scope of Order XI Rule 14 in the light of marking of Exs.A12, A22, A23 and A24. The trial Court simply allowed the petition holding that no prejudice would be caused to the respondent. While deciding the interlocutory applications, the Court has to assign reasons much less cogent reasons. If the Court gives any finding, then the revisional Court can consider whether the finding recorded by the Court below is in accordance with law or not. Order XI Rule 14 CPC can be pressed into service by the party, who is not in custody of the documents or who is not marked the certified copies of original documents on his or her behalf. As observed earlier, all the documents were marked by the party-in-person himself.

15. In the cases cited supra, the person who filed an application was not in possession of the document. Therefore, the Court directed the opposite party to produce the document. In none of the cases referred supra, a person who filed the application under Order XI Rule 14 produced the certified copies of the documents sought to be produced. The facts of the case on hand are distinguishable to the facts of the cases cited supra. The decisions cited by the respondent are no way helpful to substantiate his stand. As observed earlier, the Court can adjudicate the matter basing on Exs.A12, A22, A23 and A24 even in the absence of

production of original documents. As observed earlier, so far as the other document i.e., the original permission of GHMC dated 03.10.1998 is concerned, the trial Court is at liberty to take decision on that aspect at appropriate stage.

16. In the result, the Civil Revision Petition is allowed setting aside the order dated order dated 23.04.2018 passed in I.A.No.638 of 2018. Consequently, I.A.No.638 of 2018 in O.S.No.833 of 2012 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:06.08.2018
Rns

T.SUNIL CHOWDARY, J

