

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NOS.3146 AND 3177 OF 2018

COMMON ORDER

O.S.No.325 of 2017 on the file of the learned Senior Civil Judge, Medchal, Ranga Reddy District (old O.S.No.2840 of 2006 on the file of the learned VI Additional Senior Civil Judge (FTC), Medchal, Ranga Reddy District), was filed by the first respondent herein seeking partition of the suit schedule property by metes and bounds and for possession of her 1/5th share therein. She also sought a declaration that Document No.5447 of 2003 executed by defendants 1, 2 and 5 was illegal and non-est.

The suit schedule property is an extent of Ac.8.17 guntas in Sy.No.774 of Upparapally, Hamlet of Shameerpet Village and Mandal, Ranga Reddy District.

While so, I.A.No.392 of 2018 was filed by defendants 5, 13, 14, 15, 19, 23, 29, 31, 32, 33, 35, 36, 38 and 42 in the said suit to reopen the suit for the purpose of allowing them to adduce further evidence. They also filed I.A.No.393 of 2018 under Order 16 Rule 7 CPC to summon the Tahsildar, Bhimavaram, West Godavari District, to give evidence and produce the proceeding in L.Dis.No.999 of 2002(c) dated 09.12.2002. Admittedly, the subject I.As., were filed at a time the suit was coming up for arguments. By separate orders dated 09.04.2018, the trial Court held against the said defendants and dismissed both the I.As.

Aggrieved thereby, defendant 5 alone is before this Court by way of these revisions under Article 227 of the Constitution. C.R.P.No.3177 of 2018 arises out of I.A.No.392 of 2018 while C.R.P.No.3146 of 2018 pertains to I.A.No.393 of 2018.

Heard Sri P.Sasidhar Reddy, learned counsel for the petitioner-defendant 5, and Sri G.Vasanth Rayudu, learned counsel for the first respondent-plaintiff. Respondents 2 to 5 are stated to be the relations of the first respondent-plaintiff and respondents 6 to 39 are shown as not necessary parties to these revisions.

Parties shall hereinafter be referred to as arrayed in the suit.

The claim of the defendants, who filed the subject I.As, was that the husband of the first defendant, being the father of the second defendant, was the absolute owner of the suit schedule property and obtained layout permission in relation thereto from the Gram Panchayat during his life time. After his death, the first and second defendants, being his legal heirs, entered into an Agreement of Sale-cum-General Power of Attorney, *vide* Document No.5447 of 2003, whereby the suit schedule property was converted into residential plots and sold. They alleged that the suit for partition was filed by the plaintiff in collusion with her family members and that defendants 6 to 46 in the suit were the *bonafide* purchasers. They further claimed that the original layout and the original letter issued by the Gram Panchayat along with challans were obtained recently from the concerned authorities and that they were very much essential to substantiate their case. Further, the Tahsildar, Bhimavaram, West Godavari District, was stated to have issued a legal heir certificate to the first and second defendants under proceedings in L.Dis.No.999 of 2002(c) dated 09.12.2002. It is on the strength of these averments that they sought reopening of the suit to enable them to adduce these documents in evidence and to summon the Tahsildar, Bhimavaram, West Godavari District, to give evidence and produce the legal heir certificate.

The trial Court however opined that ample opportunity was available to the said defendants during the course of the trial to call for and cause production of the said documents but they failed to take advantage of such opportunity at that time. Further, the trial Court found that no attempts had been made earlier by the said defendants to obtain the documents now sought to be filed. As the trial already stood concluded and the case was coming up for arguments, the trial Court opined that valid and substantial reasons had not been made out for reopening the suit or to summon the Tahsildar to give evidence or produce the legal heir certificate.

Perusal of the affidavits filed in support of the I.As, bears out that no attempt was made by the petitioning defendants to explain their inaction during the trial. Be it noted that the plaintiff examined herself as P.W.1 and marked in evidence no less than 43 documents. On behalf of the defendants, two witnesses were examined and only seven documents were marked. When it was the case of the defendants all along that the husband of the first defendant, being the father of the second defendant, had obtained a layout permission during his life time and the same was acted upon after his death, they necessarily had to explain as to why they did not secure copies of the said documents at the initial stage or at least during the trial. Not even a whisper of an explanation was offered by them in this regard. Same is the case with the application filed for summoning the Tahsildar, Bhimavaram, West Godavari District, for producing the legal heir certificate. Such clear lack of diligence on the part of the said defendants at the appropriate stage cannot be lightly condoned. All the more so, when the suit in question dates back to the year 2006 and is now ripe for arguments. This Court therefore finds no

error having been committed by the trial Court in holding against the said defendants and dismissing their I.As. The said orders therefore do not warrant interference on facts and in law.

The civil revision petitions are devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

13th JULY, 2018
PGS

SANJAY KUMAR,J

