

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.3060, 3061 and 3062 of 2018

COMMON ORDER:

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

2. The petitioner, in all these cases, is the plaintiff in O.S. No.82 of 2013 on the file of the Principal Junior Civil Judge, Chittoor (for short, 'the Court below').

3. The said suit was filed by the petitioner for a perpetual injunction restraining the respondents from interfering with his possession and enjoyment of the plaint schedule property.

4. After the written statement was filed by the respondents, issues were framed, and trial commenced and concluded, both parties even filed written arguments and the case was coming up for submission of oral arguments.

5. At that stage, the petitioner filed three I.A.s. *i.e.*, I.A. Nos.224, 225 and 226 of 2018.

6. IA No. 224 of 2018 was filed under Section 151 of Cr.P.C., to enable the petitioner to mark a document said to be evidence for partition between the petitioner's family and the 1st respondent's family i.e a partition list containing 'B' schedule property given to the petitioner's family and 'A' schedule property given to the 1st respondent; I.A. No.225 of 2018 was filed to recall P.W.1 to mark the documents; and I.A. No.226 of 2018 was filed to direct the 1st respondent to cause production of partition list dated 05.03.2001 containing 'A' schedule property in the partition which allegedly took place between the 1st respondent and the father of the plaintiff/petitioner and another person by name Doraiswamy Gounder.

7. Counter-affidavit was filed by the respondents/defendants opposing this application. The 1st respondent contended that in Para 4 of the plaint, the petitioner had contended that his father and the 1st respondent had come to a settlement by *oral* partition, and similar plea was also raised in the chief-examination affidavit filed by the petitioner as P.W.1. The 1st respondent contended that without taking any plea in the plaint and in his chief-examination affidavit about the alleged written partition between the petitioner's family and the 1st respondent, the petitioner is attempting to get marked the incomplete alleged partition deed by reopening the evidence, that too at the stage of arguments, and delay the disposal of the suit.

8. By order dt.03.05.2018, the Court below dismissed the I.A. No.224 of 2018 holding that no specific reason was given by the petitioner for the delay in marking the documents in question, though they were already in the suit records. Therefore, the Court below was not inclined to allow I.A. No.224 of 2018. Assailing the same, C.R.P. No.3062 of 2018 is filed by the petitioner.

9. I.A. No.225 of 2018 was also dismissed by the Court below by another order on the same day on the ground that the petitioner did not mention what are the documents that have to be marked and did not explain specific reasons for the delay in marking the same. Challenging the same, C.R.P. No.3060 of 2018 is filed by the petitioner.

10. Further, the Court below also dismissed I.A. No.226 of 2018 recording that the petitioner did not plead that there was written partition list, and that no specific reason was stated for the delay in filing the Petition, when he knew the defense of the 1st respondent, after filing of written statement by 1st respondent. The Court below also recorded that the 1st respondent denied that there is common document such as the partition list containing 'A' schedule property and so the burden was on the petitioner to prove its existence but no such steps were taken. The Court below also noted that the petitioner did not file any xerox copy or other documents to show the same. Assailing the same C.R.P. No.3061 of 2018 is filed.

11. Learned counsel for the petitioner contended that the Court below erred in rejecting these applications filed by the petitioner; that the Court below should have allowed these applications though filed at the stage of advancing oral arguments in the suit; and great prejudice has been caused to the petitioner on account rejection of these applications by the Court below. Counsel for petitioner also produced copy of an un-registered document on Rs.50/- stamp paper executed on 05.03.2001 mentioning 'B' schedule properties, which according to the petitioner was sought to be marked through P.W.1.

12. Heard Sri L.J.Veera Reddy, learned counsel for respondents, who supported the order passed by the court below.

13. Learned counsel for petitioner did not dispute that under Section 2(15) of the Indian Stamp Act, 1899 (for short, 'the Act') as applicable in the State of Andhra Pradesh, with effect from 16.08.1986, even a memo regarding past partition is included in the definition "*instrument of partition*" and requires to be adequately stamped under Article 40 of the Schedule1(A) to the Act *i.e.*, at the rate of 3% on the market value of the separate share of the property.

14. The document dated 05.03.2001 is admittedly inadequately stamped since 'B' schedule property shown according to it is worth Rs.20,000/-. Therefore, it would be *prima-facie* inadmissible in evidence in view of Section 35 of the Act.

15. That apart, the 1st respondent did not admit having in his possession, the corresponding document in relation to 'A' schedule property which the petitioner alleged to be in the possession of the 1st respondent bearing the same date. When there is no such pleading about the existence of these partition lists in the written statement or in the chief-examination affidavit filed by the petitioner as P.W.1, he cannot be allowed to now contend that he should be entitled to the relief in the suit on the basis of these written partition lists.

16. When the suit is posted for arguments, after completion of the trial, the petitioner cannot be allowed to seek reopening of his evidence, recall of P.W.1 for the purpose of marking the documents produced by him or ask the Court to direct the 1st respondent to produce a document, which he did not admit to be in existence. Obviously, the petitioner's intention seems to be to drag the proceedings in the suit.

17. In this view of the matter, I am of the opinion that the Court below was right in rejecting the three Interlocutory Applications and the said orders do not warrant any interference of this Court under Article 227 of the Constitution of India.

18. Accordingly, these three Civil Revision Petitions are dismissed, at the stage of admission.

19. In consequence, miscellaneous applications pending, if any, shall stand dismissed. No order as to costs.

M.S.RAMACHANDRA RAO, J

Date: 16.07.2018.
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HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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Date.16.07.2018

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