

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CIVIL REVISION PETITION Nos.3149, 3156, 3174 & 3215 of 2018**

**COMMON ORDER:**

These revision petitions are being disposed of by this common order as the order assailed is a common order passed in four interlocutory applications respectively filed by the plaintiff-petitioner for reopening the evidence, permission to file the petition listed documents, recalling PW2 for further examination and receiving additional chief affidavit of the said witness.

**2.** I have heard the submissions of Sri M.V.S. Suresh Kumar, learned senior counsel representing Sri A.Srinivasa Rao, learned counsel for the petitioner-plaintiff, and of Sri Anup Koushik Karvadi, learned counsel appearing for the 1<sup>st</sup> respondent-defendant-caveator. Respondents 2 to 25 are stated to be not necessary parties. I have perused the material record.

**3.** The facts necessary to be stated as a prelude to this common order, in brief, are as follows:

The sole plaintiff brought the suit seeking following reliefs:

- “(a) to declare that the plaintiff is the absolute owner of the suit schedule property by purchasing from the legal heirs of original owner Tanikonda Ammanna.
- (b) For partition of the suit schedule properties of Ac.2.56 ½ cents from Ac.5.14 cents in S.No.86/2 and Ac.0.30 cents from Ac.0.62 cents in S.No.85/3 and Ac.0.34 cents from Ac.1.04 cents in S.No.85/5 and for separate possession.
- (c) For permanent injunction restraining the defendants and their successors from interfering with the peaceful possession and enjoyment of suit schedule property by plaintiff.
- (d) For costs.
- (e) For such and further reliefs which are deem fit and proper in the circumstances of the case.”

The 1<sup>st</sup> defendant is resisting the suit. At the conclusion of the trial and when the suit is posted for hearing arguments, the

plaintiff filed the afore-stated four interlocutory applications for the purpose of adducing further oral and documentary evidence after recalling PW2. The said applications were resisted by the 1<sup>st</sup> defendant. By the impugned common order, the trial Court dismissed all the applications. Hence, the plaintiff is before this Court.

4. The case of the plaintiff and the submissions made on his behalf are as follows: - The plaintiff purchased the plaint schedule properties from the legal heirs of the original owner, Tanikonda Ammanna. First item of the plaint schedule property is the joint property of Gogineni Kotaiah and Tanikonda Ammanna. Items 2 and 3 of the plaint schedule properties are absolute properties of Tanikonda Ammanna. While so, the 1<sup>st</sup> defendant was said to have purchased property from vendees of Gogineni Kotaiah. They sold more property than they had. To prove his case and to show that his vendor is the title holder, the plaintiff filed certified copy of FLR. On the ground that there is no stamp of the Tahasildar on the said document, the learned counsel for the 1<sup>st</sup> defendant raised an objection for marking the same. After completion of evidence on the side of the plaintiff, by mistake, the Tahasildar was not summoned. The copy of the FLR was filed and was shown as document no.5 in the list of documents mentioned in the affidavit filed in lieu of examination in chief. However, it was not marked as there is no seal and certificate of the Tahasildar. The property was mutated in the name of the plaintiff in the revenue records under 1(A) & 1(B) (Registers). The advocate noticed the mistake that the Tahasildar was not examined to mark the FLR, which is a crucial document. Hence, IA.No.150 of 2018 was filed for permission to

summon the Tahasildar to produce FLR and give evidence. The said petition was dismissed with the following observation: -

“Either the F.L.R, 1-A and 1-B registers are the public documents. Since Revenue Authorities will be maintaining those registers to note and preserve the details of the land, details of the pattadars, possessors, nature of the properties, water sources etc.

The petitioner filed this petition to summon the M.R.O., who is not a party to the proceedings, therefore, the Court is not inclined to allow the application. The petitioners can secure or obtain the certified copies-either under Right to Information Act or if necessary by obtaining Court Certificate under Rule 130 of Civil Rules of Practice and Circular Orders, the petition is devoid of merits and is liable to be dismissed.”

The vendor of the plaintiff already obtained under the provisions of the Right to Information Act, the copy of the FLR from the Tahasildar, *vide* an endorsement, dated 17.10.2017. The documents were given to the plaintiff. He was advised to file the present petitions along with documents viz., copy of FLR, 1(A) & 1(B) Register copies for being marked through PW2 by recalling him after reopening the evidence. The documents are essential to prove the case of the plaintiff.

**5.** The case of the 1<sup>st</sup> defendant and the submissions made on his behalf are as follows:-

The petitions are not maintainable. The allegations in the affidavits filed in support of the petitions show that the plaintiff has come forward with the petitions relying upon the observations in the order of the Court in IA.No.150 of 2018. The observations in the said orders are not at all grounds for maintainability of these petitions. The alleged documents were obtained (on 17.10.2017) four months prior to the orders in IA.No.150 of 2018 and are not obtained subsequent to the said orders. If really the plaintiff's

vendor obtained the same, the plaintiff ought to have stated the said fact in his affidavit filed in support of the above said interlocutory application. In his earlier affidavit, the petitioner suppressed the fact of obtaining documents on 17.10.2017 and did not explain as to why he failed to produce them at the time of filing the earlier application in IA.No.150 of 2018. All the documents are containing interpolations, erasures and over writings. Hence, the said document cannot be received in evidence. The documents are not certified true copies. In the plaint it is pleaded that after purchase he approached the defendants 1 to 25 for necessary quarrying. Therefore, mutation of property in his name does not arise. Seeking to produce 1(A) & 1(B) registers after completion of arguments results in great prejudice to this respondent as the plaintiff has not come forward with this plea earlier and as this defendant lost right of cross examination. 1(A) & 1(B) registers are un-necessary and irrelevant. The alleged FLR is a myth. There is no FLR at all. Plaintiff is not entitled to improve his case. Hence, petitions may be dismissed.

**6.** Learned senior counsel for the plaintiff submitted that the documents are copies of revenue records, which are public documents and that the same are essential for effective adjudication of the issues involved in the suit and that the said documents were obtained by the vendor of the plaintiff from the Tahasildar under the provisions of The Right to Information Act, 2005, *vide* an endorsement, dated 17.10.2017, and that the said documents were given to the plaintiff and that in the circumstances stated in the affidavit the same are filed with requests to receive the same on file along with the additional chief

affidavit of PW2 and recall PW2 for adducing oral and documentary evidence and that therefore, the trial Court is not justified in dismissing the petitions more particularly, in the light of the observations in its earlier orders. He drew the attention of this Court to the observations in the earlier order of the trial Court which are extracted supra and submitted that if an opportunity is granted to the plaintiff to file copies of the revenue/public records maintained by the revenue authorities no prejudice would be caused to the parties and that necessary documents would be available on the file of the trial Court and that they would be of great assistance to the trial Court to arrive at a just decision in the matter and that if PW2 is recalled for giving further evidence, the 1<sup>st</sup> defendant will anyhow have an opportunity to cross examine the said witness and hence, it is in the interests of justice to grant the reliefs in the revisions to the plaintiff.

7. Learned counsel for the 1<sup>st</sup> defendant strongly opposed for allowing the revisions and supported the common order of the trial Court. He submitted that the marking of copy of Fair Land Register (FLR) was objected to in the year 2012, during the evidence of PW2 on the ground that it does not contain any certificate or seal of the Tahasildar and that being aware of the said fact, the plaintiff had kept quiet for several years and that taking advantage of a stray observation in the earlier orders of the trial Court passed in I.A.No.150 of 2018, on 15.02.2018, the plaintiff filed the present four applications and that the attempt to introduce documents and adduce further evidence of PW2 at this belated stage is impermissible and that the common order passed

by the trial Court is sustainable under facts and in law; and, therefore, the revisions are liable for dismissal.

**7.1** He also placed reliance on a decision of the Supreme Court in **Bagai Construction v. Gupta Building Material Store** [(2013) 14 SCC] in support of his submission that if a party, who is in possession of the documents from the beginning or inception, fails to produce the same at the earliest opportunity, he cannot be permitted to file such documents at a subsequent belated stage even under Section 151 of the Code of Civil Procedure, 1908.

**7.2** Learned senior counsel appearing for the plaintiff would submit that as per the averments in the affidavits filed in support of the petition, the documents are not in possession of the plaintiff, but, they are in possession of the vendor of the plaintiff and that having collected the same, the same were filed with the subject interlocutory applications and, therefore, an opportunity may be given to file the documents which are copies of public documents, if necessary, by imposing necessary terms.

**8.** I have given earnest consideration to the submissions.

**9.** A perusal of the common order of the trial Court shows that the trial Court dismissed the petitions on the ground that the documents sought to be filed were obtained prior to the filing of I.A.No.150 of 2018, which was dismissed. But, the trial Court did not advert to the aspect as to whether the documents and further evidence that is being sought to be adduced with reference to the said documents would be of any assistance to the Court to arrive at a just decision on the issues involved in the suit. There are no

circumstances to hold that the delay was deliberate and was on account of culpable negligence and *mala fides* on the part of the plaintiff. Admittedly the documents being sought to be filed are copies of public records viz., revenue records. They may have bearing on the aspects to be taken into consideration for determination of the real controversy and also the principal issues involved in the suit. If the applications of the plaintiff are allowed and an opportunity is given to place such proposed evidence on record, the entire oral and documentary evidence would be before the trial Court and may be of help to it to arrive at a just decision in the matter. Adverting to the aspect that there are interpolations, erasures and over writings, in the copies of documents furnished to the plaintiff under the provisions of the Right to Information Act, when the plaintiff is not responsible for such things, on the said ground, the plaintiff cannot be denied an opportunity to file the documents as were supplied by the competent authority. Further, it is to be noted that the said aspects and the weight that may be attached to the evidence that is being sought to be adduced has to be considered by the trial Court at an appropriate stage and the said aspect of appreciation of evidence being sought to be adduced need not be gone into in these revisions as at this stage this Court is required to examine the aspect of delay and as to whether sufficient cause is shown for granting the reliefs. In the decision in **John Santiyago and others v. Clement Dass and others** [2014 (3) ALT 83] relied upon by the learned senior counsel appearing for the plaintiffs, while considering similar requests more or less in a similar factual background, this Court held as follows: -

It is well settled principle that in case 'sufficient cause' is shown for filing the documents at the hearing of the suit and/or at the end of the trial, such cause shown should receive a liberal construction so as to advance the cause of substantial justice, more particularly when the documents sought to be filed, in the opinion of the Court, are relevant and may have bearing on the aspects to be taken into consideration for the determination of the real controversy and the principal issue/s involved in the matter/suit. And what constitutes a sufficient cause always depends up on the facts and circumstances of a particular case. Hence, the applications need not be rejected merely on the ground of delay/long delay, but the test shall be whether sufficient cause is made out for the delay.'

On the same analogy, the request of the present plaintiff deserve consideration, in the considered view of this Court.

**10.** On the above analysis, this Court finds that the plaintiff made out valid and sufficient grounds to reopen the evidence, accord leave to file documents & additional affidavit of PW2 and recall PW2. However, to off set the loss that may be caused to the 1<sup>st</sup> defendant on account of the delay in the disposal of the suit, it is just and fair to impose terms while allowing the revisions.

**11.** In the result, the Civil Revision Petitions are allowed and the impugned common order is set aside and consequently all the Interlocutory Applications are allowed subject to the deposit of costs of Rs.4,000/- [Rupees Four Thousands only) by the plaintiff to the credit of the suit within ten days from the date of receipt of a copy of this order. On making such deposit, the trial Court shall fix an early date for recording further evidence of PW2, preferably within one week from the date of such deposit and complete recording of the further evidence of PW2 expeditiously. It is made clear that the documents are received on file, subject to proof,

admissibility and relevancy. Needless to state that on failure of the plaintiff to make the deposit afore-stated, the revision petitions shall stand dismissed and the common order of the trial Court shall stand revived.

Miscellaneous petitions pending, if any, in these Civil Revision Petitions shall stand closed.

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**JUSTICE M.SEETHARAMA MURTI**

Date: 18.06.2018

Note: Issue CC today.

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Vjl



**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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**2018**



**DATE: 18.06.2018**

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