

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOs.5183, 5188 AND 5331 OF 2017

COMMON ORDER

The petitioner in these three revision petitions filed under Article 227 of the Constitution is the plaintiff in O.S.No.2443 of 2007 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. He filed I.A.Nos.379, 380 and 381 of 2017 therein. I.A.No.379 of 2017 was filed by him under Section 151 CPC to reopen the suit for the purpose of recalling him as P.W.1. I.A.No.380 of 2017 was filed under Order 18 Rule 17 CPC to recall him as P.W.1 for the purpose of marking further documents in evidence. I.A.No.381 of 2017 was filed under Order 7 Rule 14(3) CPC to receive twenty documents condoning the delay in their production. By common order dated 03.08.2017, the trial Court dismissed all the I.As. Aggrieved thereby, he is before this Court.

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

O.S.No.2443 of 2007 was filed for declaration of title over the suit schedule plot and for a perpetual injunction. According to the plaintiff, after completion of his deposition as P.W.1, he examined two other witnesses and the first defendant in the suit was then examined as D.W.1. During the cross-examination of this witness, the plaintiff obtained certified copies of some documents and confronted him with the said documents but he denied the same. The said documents were not marked in evidence on his behalf as knowledge of the said documents came to him during the time of cross-examination of D.W.1. The plaintiff claimed that these documents were crucial to disprove the case of the defendants and

prove his own case. He therefore sought reopening of the case so as to recall him as P.W.1 for the purpose of marking the said documents in evidence. He also sought leave to produce the said documents as they had not been filed along with the plaint.

In his counter, the first defendant opposed this plea claiming that the plaintiff was harassing him for the past seven years, since the filing of the suit, on one or the other pretext and the filing of the subject applications was one such attempt. He stated that the evidence on both sides had been closed long ago and that the suit was coming up for arguments since 03.02.2017. Pointing out that it was for the plaintiff to file all the documents along with the plaint or, at least, before his own cross-examination, the first defendant asserted that the I.As. filed by the plaintiff were not maintainable as he could not be permitted to fill up the lacunae at this stage after closure of the defendants' evidence. He further stated that the documents sought to be filed were not material in deciding the point in issue and most of the documents were certified copies of sale deeds in favour of third parties in respect of property other than the suit schedule plot claimed by the plaintiff.

Upon considering these pleadings and hearing the parties, the trial Court opined that the plaintiff did not state the reason as to why he could not file the subject documents at the earliest time and was seeking to do so after closure of the evidence and posting of the case for arguments. As the documents now sought to be produced were available with the plaintiff but were not filed by him at the earliest time and he did not give a proper reason for filing the same with delay, the trial Court held against him. As the delay was found to be inordinate, the trial Court opined that it could not

be excused. The I.As. were accordingly dismissed holding that the plaintiff was not entitled to produce the documents by condoning the delay and by allowing him to reopen his evidence for the purpose of marking them.

Sri O.Manohar Reddy, learned counsel representing Sri Y.Nagi Reddy, learned counsel for the plaintiff, would contend that the trial Court completely lost sight of Order 7 Rule 14(4) CPC while considering the plea of the plaintiff to receive the subject documents. He would point out that the plaintiff sought declaration of his title in relation to a residential plot along with a perpetual injunction to protect his possession over the same and the entire dispute pertained to allotment of plots to the members of Kasturi Cooperative Housing Society Limited, Nagaram Village, Keesara Mandal, Ranga Reddy District, by different managing committees. The affairs of the society, *per* the learned counsel, would therefore play a vital role in deciding the title of individual members of the society as the plaintiff and the defendants claimed title from the same society but through different managing committees. He would contend that it is in this context that the enquiry report submitted by the District Co-operative Officer under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964, assumed significance and was crucial for adjudication of the suit claim. This report, it is pointed out, was submitted only in the year 2016 and therefore could not have been filed along with the plaint in the year 2007. He would further point out that the sale deeds sought to be produced all find mention in this enquiry report and therefore become relevant for consideration. As regards the orders passed by this Court, he would point out that they were also

subsequent to the institution of the suit and therefore could not be produced earlier. Learned counsel would mainly rely upon Order 7 Rule 14(4) CPC and contend that as all these documents were produced during the cross-examination of the first defendant, speaking as D.W.1, the provisions of Order 7 Rule 14 CPC would have no application at all and therefore, leave sought for production of the documents could not have been denied by applying the rigours of Order 7 Rule 14(3) CPC.

Sri Police Venkat Reddy, learned counsel appearing for the first defendant, would state that he has no objection to the marking of the Court orders but as regards the enquiry report and sale deeds, his client has serious objection. Learned counsel would submit that the I.As. were filed only with an intention to fill up the lacunae in the evidence adduced by the plaintiff and as the evidence on both sides had closed as long back as in the year 2016, no cause is made out to permit the plaintiff to make good the lapses on his part in adducing evidence at this stage.

Though Sri Police Venkat Reddy, learned counsel, orally raised the plea that D.W.1 was never confronted with the documents in question, Sri O.Manohar Reddy, learned counsel, pointed out that though this aspect was specifically pleaded by the plaintiff in the affidavits filed in support of the I.As., neither in the counters filed before the trial Court nor in the counter filed before this Court, the first defendant denied the fact that he was confronted with the documents in question. In any event, perusal of the cross-examination of the defendant, speaking as D.W.1, reflects that he was cross-examined with respect to the orders passed by this Court in W.P.Nos.13137 and 13125 of 2010 and

also the enquiry report relating to Kasturi Cooperative Housing Society Limited. In the absence of a denial by the first defendant as to the documents in question having been shown to him during such cross-examination, it is too late in the day for him to now claim so.

Order 7 Rule 14(4) CPC reads as under:

‘14. Production of document on which plaintiff sues or relies:--

- (1) ...
- (2) ...
- (3) ...
- (4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.’

In **SALEM ADVOCATE BAR ASSN. V/s. UNION OF INDIA**¹, the Supreme Court observed, while considering the above provision, that the words ‘plaintiff's witnesses’ were mentioned therein as a result of a mistake by the legislature and the words ought to be ‘defendant's witnesses’. Therefore, once the defendant's witnesses are confronted with a document which was not filed by the plaintiff along with the suit plaint, the provisions of Order 7 Rule 14 CPC and more particularly, Rule 14(3) CPC thereof, would have no application. The plaintiff would therefore not be required to seek the leave of the Court in the usual sense to receive such documents in evidence thereafter. The admissibility, proof and relevance of such documents is however a different matter and would have to be adjudicated upon by the trial Court at the appropriate stage.

¹ (2005) 6 SCC 344

In the aforesaid circumstances, this Court finds that the conclusion of the trial Court that there was inordinate delay on the part of the plaintiff in producing the documents in question, thereby barring him from seeking to do so at this stage, cannot be countenanced. Firstly, the enquiry report as well as the orders passed by this Court were post-institution of the suit and could not have been produced along with the plaint. No doubt, the sale deeds now sought to be produced are of earlier vintage but they gain relevance only because of the fact that they find mention in the enquiry report of 2016. That being so and given the fact that these documents all seem to have been produced during the cross-examination of D.W.1, the rigours of Order 7 Rule 14(3) CPC would not apply.

The trial Court shall therefore receive the documents in question and reopen the evidence of P.W.1 to enable him to mark the same in evidence subject to admissibility, proof and relevance.

The civil revision petitions are allowed to that extent.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

9th FEBRUARY, 2018

PGS