

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.3240 OF 2017

ORDER:

Heard Mr.Arun Kumar Doddla for petitioner and Mr.N.Ashok Kumar for respondents.

The revision petitioner filed O.S. No.8 of 2008 for perpetual injunction restraining the respondents herein from interfering with the possession and enjoyment of petitioner of plaint schedule property. The respondents filed written statement and are contesting the suit. The respondents filed I.A. No.218 of 2016 under Order VIII Rule 1A (3) of CPC seeking leave of the Court to receive documents i.e. (1) simple sale deeds dated 10.08.1984, 10.08.1984, 25.06.2004, certified copies of Pahanis for the year 2012-13, 2014-15, land revenue paid for the years 2008-09 to 2014-15. The revision petitioner objected to the prayer in I.A. No.218 of 2016. The case of parties in affidavit and counter is briefly stated thus:

Respondents stated that the documents are traced out after filing the written statement and that there is pleading in the written statement to that effect. Therefore, the documents may be received.

Petitioner stated that the documents are not relevant to the subject matter of property and there is no pleading to that effect in the written statement. Therefore, these documents cannot be received.

The learned trial Judge through the order impugned in the CRP granted the prayer. Hence the revision.

Mr.Arun Kumar contends that the documents referred in I.A. No.218 of 2016 do not have foundation in the written statement. Therefore, any amount of evidence without pleading is impermissible and illegal. He contends that the learned trial Judge did not appreciate the jurisdiction or discretion vested in the trial Court by Order VIII Rule 1A of CPC. According to him, the case of respondents even if tested on both the counts namely, from the stand taken in the affidavit and the absence of averments for the alleged delay in filing these documents along with the written statement, the respondents are not entitled for the relief. He relies on the decisions of this Court in R.Saraswathi v. P.Pajamanikyam @ Veeran¹ and Kalva Komuraiah v. Kalva Boddiah² for the proposition that the documents cannot be introduced without foundation in the pleadings.

Mr.Ashok Kumar, on the other hand, contends that it is incorrect to contend that there is no basis in the written statement. He draws the attention of the Court to Paragraph No.7 of the written statement and contends that the respondents claiming either title or possession relied on sale deeds said to have been executed in their favour in the year 1984. He fairly concedes that the written statement may not disclose the details of the transaction etc. He further contends that the trial Court has merely granted leave to receive the documents. This cannot be treated as concluding proof or legality of the documents which are filed with leave under Rule 1 of Order VII. The trial Court exercised discretion

¹ 2015 (5) ALT 527

² 2018 (3) ALD 643

and granted leave and this Court in its jurisdiction under Article 227 of the Constitution of India ought not to reverse the findings. He prays for dismissing the CRP.

Now the point for consideration is:

Whether the revision petitioner has made out case warranting interference under Article 227 of the Constitution of India against the order impugned in the CRP?

The 1st submission of Mr. Arun Kumar is that there is absolutely no reference to the documents in the written statement filed by the respondents. On the other hand, the case of Mr. Ashok Kumar is that at best what is stated in the written statement could be a case of disclosure of source through which the title and possession are claimed by the respondents but not disclosing all the details as may be necessary. This contention canvassed by the counsel can be answered by excerpting the details on which contest is laid by both the parties.

“ It is further submitted that in the said partition between the father of the plaintiff and his agnates by name Adi Agaiah, Jaggaiah, Adi Ramaiah, S/o Venkataiah sold the suit Sy.No.372 an extent of 2A-26 Guntas and 0A-26 Guntas total extent 3A-12 Guntas in the presence of the Pattedar Sri. Late Adi Narayana in the year 1984 since then the Defendants are in possession and enjoyment of the suit land till the day without any break and to the knowledge of the plaintiff. The Plaintiff has filed this false suit only to grab the land of the defendants giving false boundaries.”

Perusal of the above stand discloses that at the earliest point of time, the respondents fixed the mode and manner in which they

have got title or possession to the property. It is also true that the respondents have not given the date of simple sale deeds etc. in the written statement. In this situation, whether this Court in exercise of its jurisdiction under Article 227 ought to examine each one of the circumstances independently or give preference to the discretion exercised by the trial Court. I have taken note of the reasoning given by the learned trial Judge. The learned trial Judge, on being satisfied, through the order impugned in the CRP, granted leave by leaving all other aspects for consideration at right time. The effect of allowing application is the respondents are allowed to introduce the documents. There are subsequent stages at which, objections available in law can be taken by revision petitioner/plaintiff. This Court is in agreement with the principle or ratio on which the revision petitioner is relying upon, but it does not apply to the case on hand. After perusing the record and taking note of the jurisdiction of this Court under Article 227 of the Constitution of India, this Court is not persuaded to interdict the order impugned in the CRP. The CRP fails and dismissed. No order as to costs.

The trial Court considers and disposes of the suit within two months from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 30.08.2018
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