

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition Nos.4571 & 4580 of 2018

COMMON ORDER:

Aggrieved by the common order dated 19.07.2018 in I.A.Nos.875 and 876 of 2018 in O.S.No.198 of 2008 passed by the learned Senior Civil Judge, Nalgonda, the petitioner/plaintiff preferred the instant CRPs.

2) Heard.

3a) The petitioner's case is that on enquiry she came to know that a judgment was passed by Subordinate Judge, Nalgonda in O.P.No.24 of 1982 on 07.03.1986 whereunder it was held that claimant No.2 i.e. the Property Association of Baptist Church (P) Limited (PABC) represented by S.A.Prakasham was entitled to the properties mentioned in the schedule of the reference as per Section 11 (3) of A.P. Escheats and Bona Vacantia Act, 1974 (for short "the Act") and it was also held that T.Samuel the property custodian and bursar of T.B.Churches of Self Supporting Field Association was not entitled to the possession of the properties mentioned in the schedule of the reference made by the local officer (Joint Collector), Nalgonda.

b) Petitioner's further case is that as per the judgment in O.P.No.24 of 1982, Prakasham was declared as custodian of the property and the said Prakasham has authorized the petitioner/plaintiff to own the suit schedule property and hence the said document is very much essential to prove the claim of the plaintiff in the suit schedule property. The petitioner/plaintiff

could not trace it out when she was examined earlier as witness. Hence the petitioner proposed to file the judgment in O.P.No.24 of 1982.

c) Petitioner's further case is that she obtained copies of affidavits of G.M.Franklin Albert and 2nd defendant filed in W.P.No.10057 of 2009 before the High Court and they are also important in the instant suit. In the affidavit filed by G.M.Franklin Albert on behalf of defendants, he gave an undertaking that they would not alienate the suit property but in spite of the said undertaking, Franklin and 2nd defendant have alienated the suit property and thereby they have committed contempt of court. Besides souvenir issued by M.B.Zion church, Devarakonda on completion of 100 years i.e. 1910 to 2010 is also an important document wherein it was clearly mentioned that G.Albert Samuel rendered service to Church during 1942 to 1961 and hence those documents may be permitted to be marked as exhibits on behalf of plaintiff.

Hence, I.A.No.875 of 2018 was filed under Order VII Rule 14 r/w Section 151 CPC to receive the petition mentioned documents. I.A.No.876 of 2018 was filed under Order XVIII Rule 17 r/w Section 151 CPC to recall PW1 for marking the aforementioned documents.

d) Respondent/defendant No.2 filed counters and opposed the petitions.

e) The trial Court dismissed the petitions mainly on the ground of delay.

4) On a close scrutiny of averments made in the plaint and written statement and in I.A.Nos.875 and 876 of 2018 and also counters filed in those petitions, this Court is of the view that the documents sought to be produced by the petitioner/plaintiff have some relevancy in the suit.

5a) It is the case of the plaintiff that originally H.No.5-6-100 along with other Church properties were owned and possessed by PABC. One Konda Mark rendered services to the PABC represented by the then Custodian—S.A.Prakasham and the said Prakasham allotted the house in favour of Konda Mark's wife—Konda Grace Mark and since then Konda Grace Mark and her daughter—Blessy Mark, who is the plaintiff were in possession and enjoyment of the said property.

b) It is also the further case of the plaintiff that the District Collector, Nalgonda declared all the properties of PABC including the aforesaid house to vest in the Government under the Act. Aggrieved, S.A.Prakasham filed writ petition before the High Court wherein the High Court instructed the Government to send a reference to the Civil Court and accordingly the Collector made a reference to Senior Civil Judge, Nalgonda and the said reference was registered as O.P.No.24 of 1992 wherein an order was passed holding that Prakasham representing PABC was entitled to the properties but not T.Samuel. The said Prakasham allotted the suit house in favour of mother of the petitioner/plaintiff and hence the judgment in O.P.No.24 of 1982 is relevant. So far as the said judgment is concerned, the observation of the

trial Court is that the order was passed in 1986 and certified copy of the order showed copy application was filed on 23.03.2018 and copy was given on 27.03.2018, but the petitioner kept quiet till the matter came up for arguments and petitioner did not show any reason for the delay in filing the said judgments.

c) Sofaras the affidavits of Franklin and 2nd defendant in W.P.No.10057 of 2009 are concerned, the case of the petitioner is that in those affidavits they clearly mentioned they would not alienate the suit property but in spite of said undertaking they have alienated the property and thereby committed contempt of court. To prove this fact, the petitioner proposed to file the said documents. The trial Court held that it could not understand the purpose of filing the copies of affidavits in W.P.No.10057 of 2009.

d) The third document is Souvenir relating to M.B.Zion Church, Devarakonda. In respect of said document, the version of the petitioner/plaintiff is that in the said Souvenir, it was clearly mentioned that G.Albert Samuel rendered service to Church during 1942 to 1961 and to show this fact the said Souvenir is essential. The trial Court observed that the petitioner has not mentioned the reason for not filing the souvenir till the matter reached the stage of arguments.

6) As can be seen, the documents proposed to be filed by petitioner/plaintiff cannot be said to be altogether irrelevant and inadmissible. The petitioner claims suit property on the strength of allotment made by one

S.A.Prakasham, the custodian of PABC, in favour of her mother for the services rendered by her father. In that context, the judgment in O.P.No.24 of 1982 wherein it was held that Prakasham was entitled to properties of PABC, is relevant. Samuel is one of the claimants in O.P.No.24 of 1982 and in the judgment in O.P.No.24 of 1982 it was clearly held that said Samuel was not entitled to possession of the properties mentioned in the schedule. So the undertaking given by Samuel and 2nd defendant in W.P.No.10057 of 2009 can also be said to be relevant though the trial Court was not deciding the contempt said to be committed by them. So also, the Souvenir issued by M.B.Zion Church, Devarakonda wherein the period of services rendered by G.Albert Samuel was mentioned, is also relevant having regard to the facts. So, basically all the documents proposed to be marked by the petitioner/plaintiff have relevancy to the suit.

7) Delay is concerned, it is the case of the petitioner that after coming to know about the proceedings in O.P.No.24 of 1982 she applied for certified copy and obtained the same. It is to be noted that in none of the documents the petitioner/plaintiff was a party. Therefore, her knowledge about those documents cannot be presumed on the very date on which the documents were generated. It is a suit where the valuable rights of the parties are at stake. Therefore, the trial Court ought to have taken a holistic view of the matter and allowed the petitions instead of dismissing the same on the ground of delay. Hence, the common order is not sustainable.

8) Accordingly, both the Civil Revision Petitions are allowed by setting aside the common order dated 19.07.2018 passed in I.A.No.875 and 876 of 2018 and consequently the said IAs are allowed directing the trial Court to re-call PW1 for further evidence and to mark the proposed documents as exhibits on behalf of petitioner/plaintiff. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 03.10.2018
Murthy

