THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.4891, 5249 and 5355 of 2018

COMMON ORDER:

1) Assailing the orders dated 03.08.2018 passed in I.A.Nos. 125, 126 and 127 of 2018 in O.S.No.673 of 2012 on the file of the I Additional Senior Civil Judge, Kakinada, wherein the three applications filed for recall, re-open and to receive documents respectively were allowed, the present three Civil Revision Petitions came to be filed.

2) Since the issue involved in all the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.

3) The facts in issue are as under:

The respondents/plaintiffs filed O.S.No.673 of 2012 seeking declaration of title and delivery of vacant possession. After completion of the evidence, the present applications came to be filed for re-open, recall and receive the registration extract of the settlement deed dated 29.09.1953, executed by Vegesina Satyanarayana Raju in favour of the plaintiffs and others. In the affidavit filed in support of the said petitions, it is pleaded that though there is a reference

to this document in the plaint filed but only at the time of preparation of arguments it was noticed the importance of the document, since DW.1 pleaded ignorance of the said document.

4) A counter came to be filed denying the entire allegations made in the application. It is stated that intentionally the plaintiffs have not brought this document at the earliest point of time and only after completion of trial, the same is now sought to be brought on record though there is a reference to it in the plaint and also the document which marked as Ex.A1 in another suit filed by the plaintiff herein.

5) After considering the rival submissions made and also the authorities on the subject namely as to when and under what circumstances a document can be brought on record, allowed the same. Aggrieved by the said orders, only one revision was filed questioning the order of the trial Court in receiving the said document and when an objection was raised by the learned counsel for the respondents, two more revisions came to be filed questioning the orders of the trial Court in re-opening and recalling of PW.1.

6) Under clause (1) of Rule 14 of Order VII of the Code of Civil Procedure, 1908, where a plaintiff relies upon a document to sue or relies upon document in his possession or

seek support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. Under clause (3) thereof, a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. From the aforementioned statutory provisions, it is evident that a duty is cast upon the plaintiff to enter every document on which he sues and to produce the same in Court along with the plaint. Thus, clause (3) of Rule 14 contains a statutory embargo against filing such document without the leave of the Court. It is settled by a catena of judgments that the Court cannot grant leave to file documents at a belated stage on mere asking. The plaintiff, who seeks to file documents at such stage, has to satisfy at least two conditions, namely; (1) the documents are necessary for deciding the real controversy in the suit and (2) sufficient cause for not producing the documents along with the plaint existed. (Uppu Hymavathi Mahila Sangam rep. by its

President M.Anjana Devi and others v. Sri Vidyaniketan Public School[1])

7) In G.P.R.Housing Private Limited Vs. C.Prithvi Raj Reddy[2] , this Court held as under:

> "Order VII Rule 14 of the Civil Procedure Code, 1908 enjoins upon the plaintiff to enter all documents, upon which he relies in a list, and produce them in the Court when the plaint is presented. However, Sub-Rule (3) thereof vests power in the Court to grant leave to file the documents at a later stage but such power has to be exercised only upon the party satisfying the Court that, for convincing reasons, those documents could not be filed earlier. There can be no hard and fast rule for the Court to exercise discretion while granting leave under Sub Rule (3) of Rule 14. The Courts must always exercise sound discretion while dealing with the applications for leave to file additional material. Mere delay by itself would not constitute the sole ground for rejecting the leave. If the facts and circumstances of the case justify non-filing of the documents at an earlier stage, the Court will not reject the application for leave only on the ground of delay. In the ultimate analysis, the endeavour of the Court must always be to decide the real controversy in issue. If the material sought to be produced has relevance on the issues involved in the suit and helps the Court to determine the issues properly and effectually, the Court must exercise its discretion in favour of allowing such evidence."

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[1] (2018) 2 ALT 26
[2] (2015) 1 ALT 330

8) In Lukka Srinivasa Rao @ Venkateswarlu Vs. Lukka Sivaiah[3], this Court held as under:

> "As regards the proposition of law viz., that Order VII Rule 14(1) C.P.C., enjoins upon the plaintiff to file all his documents along with the plaint and that unless he puts forth convincing reasons, the Court cannot allow him to file the documents at a later stage, the same is unexceptionable. Indeed, this Court has reiterated this legal position in both the judgments cited by learned Counsel, as referred to supra. However, whether a party has put forth sufficient reasons for filing the documents at a belated stage or not, depends upon the facts of each case and no hard and fast rule can be laid down in that regard."

9) From the judgments referred to above, it is clear that the Court cannot grant leave to mark documents at a belated stage on mere asking. The plaintiff, who seeks to file document at such stage has to satisfy two conditions namely (1) documents are necessary for deciding the real controversy in the suit and (2) sufficient cause for not producing the document along with the plaint existing.

10) Therefore, the question now is whether the plaintiffs have fulfilled the requirements as stipulated in the judgments referred to above.

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[3] (2016) 1 ALT 36

11) It is to be noted here that the averments in the plaint refers to the settlement deed dated 29.09.1953, which is now sought to be marked. As per the averments in the plaint, the father of the first plaintiff used to possess extensive lands in Kolanka and Pekeru villages. The father of the first plaintiff by name Vegesna Satyanarayana Raju, during his life time executed a registered settlement deed dated 29.09.1953, settling the lands and the house properties that were allotted to him in a partition held between the father of the first plaintiff and his son. According to the settlement deed, he settled 'A' schedule items to his wife Smt. Buchi Venkayamma with absolute rights apart from other properties settled in the name of his daughters. As per the recitals of the settlement deed, the mother of the first plaintiff B.Venkayamma enjoyed the property with absolute rights. The first plaintiff and her husband Subbaraju used to reside at Kolanka village in the house of the parents of the first plaintiff and used to look after the welfare of the parents of the first plaintiff. Out of love and affection, the mother of the first plaintiff executed a registered settlement deed dated 10.01.1960 in favour of the first plaintiff and her husband Subba Raju settling the properties situated in Pekeru and Kolanka villages, which she got by way of registered settlement deed dated 29.09.1953.

12) From the averments in the plaint, it is clear that the source for executing the registered settlement deed by the mother of first plaintiff on 10.01.1960 is the registered settlement deed, dated 29.09.1953, executed by her husband in her favour. It appears that since the defendants also got part of that properties by way of registered settlement deed dated 29.09.1953, the plaintiffs only got marked the extract of settlement deed dated 10.01.1960 to show as to how they got title over the property. Probably under a premise that the defendants may not deny the execution of the settlement deed since they were also beneficiaries from the said deed. However in the written statement the defendants denied everything including the execution of settlement deed dated 29.09.1953.

13) At this stage, it is to be noted that two other suits were filed by the petitioners and defendants against each other ie. O.S.No.146 of 2006 and O.S.No.79 of 2007. Both the suits were for injunction. The suit filed by the plaintiffs was rejected while the suit filed by the defendants was decreed. The fact that the defendants are in possession of the property cannot be disputed for the reason that even prayer in the present suit is for recovery of vacant possession. The material on record would show that in the two suits referred

to above this registered settlement deed dated 29.09.1953 was marked as Ex.A1. When this document was confronted to DW.1 in this suit, he pleaded ignorance about the same, which made the plaintiffs to file the present applications. Therefore, this Court is of the opinion that merely because there is a reference to this document and that it was not produced at the earliest point of time, in the given set of circumstances cannot be found fault with.

14) As observed by me earlier, importance was given to the subsequent settlement deed executed in the year 1960 by the mother of the first plaintiff, who got the part of the properties along with the defendants (some other property) basing on registered settlement deed dated 29.09.1953. Therefore, this Court is of the opinion that the argument of the learned counsel for the petitioner that this document is not necessary for deciding the real controversy in the suit cannot be accepted. As observed earlier, the thirst was on the registered settlement deed executed in the year 1960 in the plaint, but when DW.1, who was beneficiary of the settlement deed executed in the year 1953, pleaded ignorance of the same, the plaintiffs thought of marking of the same. Hence, I feel that sufficient cause for not producing the document though referred to in the plaint, is made out.

15) Having regard to the above, I see no reason to interfere with the impugned orders. Accordingly, all the Civil Revision Petitions are dismissed.

16) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed. There shall be no order as to costs.

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JUSTICE C. PRAVEEN KUMAR

28.09.2018
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