HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.Nos.1322,1396 and 1418 of 2015

COMMON ORDER:

These three revision petitions arising out of applications filed in the lower Court (1) for recalling PW.1, (2) for reopening the case (3) and also to receive the documents respectively. As all the three applications have allowed by the Court below, the Civil Revision Petitions have filed questioning the same.

With the consent of both the learned counsels the matters were heard together and the revisions are proposed to be taken up for disposal.

CRP.No.1322 of 2015 is filed against the an order in IA.No.64 of 2015 (recall PW.1), CRP.No.1396 of 2015 is filed questioning the order in IA.No.62 of 2015 filed for reopening the case and CRP.No.1418 of 2015 is filed against the order in IA.No.63 of 2015 filed to receive the documents.

The facts that are necessary for deciding the revisions are that the plaint has been filed in OS.No.205 of 2012 by one D.Rama Mohana Reddy against G.V.Rama Gopal and M.Bhaskara Reddy seeking an order of permanent injunction restraining the respondents, their men and agents from interfering with the plaintiff's possession of the property. The defendants have filed a written statement and contested the matter. The present set of revisions arise out of the orders

passed in IA.No.64 of 2015 filed to recall PW.1, IA.No.62 of 2015 filed to reopen the case and IA.No.63 of 2015 filed to receive the documents, for the purpose of marking the eight (8) documents which are filed in IA.No.63 of 2015.

All these three petitions came to be allowed. The documents were directed to be received in evidence. The application to recall PW.1 was allowed and as a consequence, the case was also reopened. Questioning the three orders, the present three revisions are filed.

This Court has heard Sri V.Nitesh, learned counsel for the petitioner and Sri U.Seshagiri Rao, learned counsel for the respondents.

As the facts are common, nothing much is being reproduced on the facts. Learned counsel for the petitioner argued that the applications are filed belatedly; that until the completion of the evidence was over, the petitioner did not file the application and that the delay was not sufficiently explained. The essential objection was that the Court below mechanically allowed the applications.

On the other hand, learned counsel for the respondents argued that the orders passed are reasoned orders and that there was not much delay in filing of the applications and the Court below considered all the facts in coming to the conclusion that it did.

This Court after examining all the three matters notices that the applications are filed on 18.02.2015 as can be seen from the rubber stamp. The applications were drafted on 13.02.2015; served on other side on 14.02.2015 and filed into Court on 18.02.2015. In the affidavit, it is mentioned that on 09.02.2015 the defendants closed the evidence and the suit was posted to 13.02.2015 for arguments. The lower Court, on the other hand, has noticed that the evidence of the defendants was completed on 09.02.2015 and the petitioner filed the application on 20.02.2015.

This Court is proceeding on the basis of the fact that the lower Court noticed the date of filing as 20.02.2015. Irrespective of the slight discrepancy, the fact remains that immediately after the closure of the defendants' evidence, the applications are filed. The application was also filed stating that these documents were confronted to DWs.1 and 2 during their cross-examination, but the witnesses denied the knowledge of the same. Therefore, the plaintiff wants to mark the same in evidence on his side. Hence, the applications for reopening, recall and to receive the documents.

The counsel for the respondents also pointed out that the applications are filed as to cover up the gaps in the evidence and also that there is no pleading to support the receipt of these documents.

This Court after hearing both the learned counsels is of the opinion that the impugned orders are passed on the applications which are filed within a fairly reasonable time. Order VII Rule 14(3) CPC now applies to the facts and circumstances of the case which clearly states that no document can be filed at a latter stage after the plaint is filed except with the permission and/or leave of the Court, but that nothing applies to the document produced for cross-examination of the plaintiff (wrongly printed as noticed in the case of ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India (UOI)***[1]). Therefore, when a witness is being cross-examined, a document can be produced. In this case, as can be seen from the evidence, the documents were confronted to the witnesses and they denied the knowledge. Hence, immediately thereafter, the applications are filed. The delay in the opinion of this Court is not abnormal.

The other point that there is no pleading about these documents or that they are being received to cover up the gaps in the earlier evidence etc., is a matter to be decided by the lower Court. On the basis that the pleading is 'not adequate' or correct or that gaps in the evidence are covered up, the evidence cannot be set shut out. The counsel can raise these objections when the document is tendered in evidence, get the document marked subject to the objections

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[1] AIR 2005 SC 3353

if any and argue the matter on merits. The lower Court will then decide on the tenability of the objections. This is the normal course that should be followed.

Therefore, this Court is of the opinion that there are no merits in the revision petitions filed.

The lower Court is directed to proceed with the matter (OS.No.205 of 2012) after receiving the documents without in any way being influenced by what is stated in this order. The admissibility of the documents is a matter for the lower Court to decide.

In the result, the Civil Revision Petitions are dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the revisions shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 28.09.2018

KLP