

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.3195 2014****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 21.07.2014 in I.A.No.583 of 2013 in O.S.No.410 of 2011 passed by the Additional Senior Civil Judge, Kurnool, allowing the application in part to receive the agreement of sale dt. 15.12.2008 while rejecting to receive the Registered Mortgage Deed dt. 10.02.2011.

The petitioner/defendant filed a Petition under Order VIII Rule 1-A and Section 151 CPC, to receive the documents shown in the petition schedule, raising specific contention that the petitioner/defendant discharged the debt due to the respondent/plaintiff by mortgaging the property and therefore, the documents are necessary to decide the real controversy and requested this Court to receive the documents by condoning delay.

The respondent filed Counter, denying the material allegations and contended that the documents cannot be received in the absence of any factual foundation in the pleadings besides other contentions.

The trial Court, upon hearing both the counsel, allowed the petition-in-part receiving the agreement of Sale Deed dt. 15.12.2008 while refusing to receive the Registered Mortgage Deed dt. 10.02.2011.

Aggrieved by the Order passed the trial Court, the present Civil Revision Petition is filed raising several grounds, mainly on the ground that the petitioner/defendant need not raise such plea in the Written Statement since the said transaction came to the notice of this petitioner subsequent to filing of Written Statement and absence of plea in the Written Statement based on the Registered Mortgage Deed dt. 10.02.2011 is not a ground to deny the relief and necessity of documents to establish the plea of the petitioner based on probabilities of the case, but the trial Court committed an error in passing the impugned Order.

During hearing, learned counsel for the petitioner, reiterated the contentions raised in the grounds of appeal and whereas the respondent/plaintiff supported the Order dt.21.07.2014 in all respects.

Admittedly, the suit was filed for recovery of the amount based on promissory notes and the petitioner herein/defendant filed Written Statement on 24.01.2005, but there was no reference about the document i.e., registered Mortgage Deed, in the entire Written Statement and the discharge pleaded by the defendant was not based on such registered Mortgage Deed.

Order 8 Rule 1-A CPC mandates that the petitioner/defendant has to refer all the documents relied upon by him in the list of documents and in case the documents are not available with the petitioner, he has to comply the requirement under Order 8 Rule 1(A) (3) of CPC. According to

Sub Rule 3 of CPC, a document which ought to be produced in Court by the defendant under rule, but is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit and where any such document is not in the possession or power of the defendant, he shall, whenever possible, state in whose possession or power it is; in compliance of Sub Rule 2, the question of exercising power under Sub Rule 3 of CPC would arise.

Here in this case, the reason for failure to refer the document i.e., registered Mortgage Deed, is that it came to the notice of the petitioner/defendant subsequent to filing of Written Statement. Even if such fact came to the notice of the petitioner subsequently, there is a procedure to bring it to the notice of the Court by amending the Written Statement by filing a petition under Order 6 Rule 17 CPC, subject to proviso annexed thereto. But, no such attempt was made to bring the fact to the notice of the Court. Therefore, in the absence of any factual foundation in the Written Statement, the Court cannot permit the petitioner to adduce any evidence.

The Apex Court in *Bachhaj Nahar v. Nilima Mandal and others*¹, held that a case not specifically pleaded cannot be considered and when no plea was raised based on such documents, the parties cannot be permitted to adduce evidence since the Court cannot travel beyond the pleadings.

¹ AIR 2009 SC 1103

The Apex Court placing reliance on earlier judgment reported in *Ram Sarup Gupta (dead) by L.Rs v Bishun Narain Inter College*², held as follows:

“It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case, it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties know the case and they proceeded to trial on those issue by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.”

If the principle laid down in the above two judgments is applied to the present facts of the case, when no factual foundation was laid in the pleadings regarding discharge based on registered Mortgage Deed, which is sought to be produced before the Court, the Court cannot permit the parties to adduce any evidence beyond the pleadings. Therefore, the documents cannot be received in view of absence of any plea in the pleadings based on the registered Mortgage Deed.

Therefore, the trial Court did commit no error in rejecting the document sought to be produced i.e., registered Mortgage Deed, exercising power under Order 8 Rule 1(A) (3) CPC and the

² AIR 1987 SC 1242

Order does not suffer from any illegality or infirmity warranting interference of this Court under Article 227 of the Constitution of India as it devoid of merits and consequently, the Civil Revision Petition is liable to be dismissed.

In the result, this Civil Revision Petition is dismissed at the stage of admission.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

Date: 29-01-2018
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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