

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.6705 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India is filed by the unsuccessful petitioner-plaintiff assailing the order, dated 26.09.2018, of the learned II Additional Junior Civil Judge, Chittoor, passed in IA.No.513 of 2018 in OS.No.224 of 2015.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner –plaintiff ['plaintiff', for short] and of the learned counsel appearing for the 1st respondent- 1st defendant ['1st defendant', for short]. 2nd respondent - 2nd defendant is the Commissioner, Chittoor Municipal Corporation.

3. To begin with, it is to be noted that in a suit for perpetual injunction filed by the plaintiff, which is being resisted by the defendant, the case of the plaintiff is that he is the tenant in the plaint schedule shops. 1st defendant is resisting the suit. During the course of trial, the plaintiff filed the instant application to grant leave to file attested true copy of the proceedings of the 2nd respondent in Roc.No.4228/ 2011/ G1, dated 13.07.2015, and receive the same on file. The said application was resisted by the 1st defendant. On merits and by the order impugned, the trial Court dismissed the petition. Therefore, the plaintiff filed the present revision.

4. The case of the plaintiff in support of the request afore-stated, in brief, is this: - 'The 2nd defendant – Commissioner, Chittoor Municipal Corporation issued the aforesaid proceedings in favour of the plaintiff with regard to the suit property. The original served copy of the proceedings is filed by the plaintiff in CMA.no.21 of 2016 on the file of IX Additional District Court. On the

disposal of the CMA the plaintiff preferred CRP.no.1976 of 2017 before this Court. Since the document is filed in the CMA the plaintiff obtained attested copy of the above said proceedings from the Town Planning Officer of the Municipal Corporation. The said document is an essential and crucial document to prove the case of the plaintiff. Hence, the instant Application is filed.'

5. Per contra, the case of the 1st respondent - 1st defendant is this:

'The plaintiff suppressed the fact that he filed the present document along with a petition, on 23.09.2016, before the IX Additional District Court, Chittoor, viz., IA.no.14 of 2016 in CMA.no.21 of 2016. The said petition and the said CMA preferred by the plaintiff were dismissed on 21.12.2016. The Certified Copy of the petition and orders passed in IA.No.14 of 2016 and CMA.no.21 of 2016 are filed into Court for perusal of the Court. The present petition for receiving the copy of the very same document is not maintainable because a similar request was refused by the appellate Court. The plaintiff is a land grabber. His name was noted as rowdy sheeted, on 05.05.2010, in the list maintained by the II Town Police Station, Chittoor. In the CRP, this Court directed both parties to maintain *status quo* obtaining with regard to possession as on the date of passing of the said orders and till the disposal of the suit; and, directed the trial Court to proceed with the suit and dispose of the same as expeditiously as possible. In order to drag on the matter, the plaintiff filed an application under Order I Rule 10 of CPC to implead the Municipal Commissioner, Chittoor, as 2nd defendant and the same was allowed. Necessary amendment was carried out. Additional written statement of this defendant is filed. The plaintiff is somehow taking adjournments and dragging on the matter inspite of directions of this Court to dispose of the suit as expeditiously as possible. Even after filing of his chief affidavit, the plaintiff is wantonly dragging on the matter. Hence, the petition may be dismissed.'

6. The trial court dismissed the petition of the plaintiff observing in its order that except stating that the original served copy is filed in the CMA, no other valid reasons are given for granting leave to file the document and that the said CMA.no.21/ 16 was dismissed and the order in the CMA is binding on it and that the present petition by the plaintiff to grant leave to file the document is not maintainable.

7. Learned counsel for plaintiff while reiterating the pleaded case of the plaintiff contended as follows: -

‘The trial Court erroneously dismissed the petition only for the reason that the served copy of the present document, which is a public document is filed in the CMA, and that the CMA was dismissed though the served copy of the said document being a proceeding of the Commissioner, Chittoor Municipal Corporation, is a public document. The present document is the attested copy of the said public document issued by another public officer of the Corporation. The document is not filed as additional evidence in the CMA. The suit is for perpetual injunction. An attested true copy of public document issued by the Town Planning Officer of the Municipal Corporation, who is also a public officer and the document being a public document is admissible in evidence and its authenticity need not be doubted. It is important to substantiate the case of the plaintiff in the suit for perpetual injunction. The said document, if permitted to be filed, would be of immense help to the trial Court in arriving at a just decision in the suit. Merely on the ground of delay, the plaintiff cannot be denied an opportunity to file an important material document more particularly as the proceeding was issued by the Commissioner subsequent to the filing of the suit. Therefore, the contention of the 1st defendant that there is delay on the part of the plaintiff in filing the document is untenable.’

8. Learned counsel for the 1st defendant while reiterating the pleaded case of the 1st defendant, contended as follows:

‘Served copy of the very same document, that is, the proceeding of the 2nd defendant/ Municipal Corporation, Chittoor, is filed in the CMA. The said CMA was dismissed. Therefore, the trial Court was justified in not receiving the document since the served copy of the said document is already filed in the CMA which was dismissed. Even in this CRP filed before this Court, this Court while directing both the parties to maintain *status quo* as on that day directed the trial Court to dispose of the suit as expeditiously as possible. But the plaintiff is dragging on the matter by filing interlocutory applications, one after the other, and is not getting ready despite filing his affidavit in lieu of examination in chief. Hence, the order of the trial Court, which is justified, needs no interference.’

9. Learned counsel for the plaintiff relied upon the decision in *Lukka Srinivasa Rao @ Stateswomen* [(2015) 6 ALD 38] in support of the proposition that procedure is handmaid of justice and that procedural & technical hurdles shall not come in the way of the Court for doing substantial justice. Placing reliance on the decision it is submitted that this case is not a case where if the document is received serious prejudice would be caused to the adverse party and that in contrast this is a case where the Court should lean towards doing substantial justice rather than relying on procedural and technical violations and that in the case on hand, the document being an attested copy of a public document, that is, a proceeding issued by the 2nd respondent/ Commissioner, Chittoor, subsequent to the suit, sufficient reasons are made out and sufficient cause is shown for not producing the document at an earlier stage. Placing reliance on this decision, he would also submit that immediately after the document came to light, the same was filed in the CMA and that after disposal of the CMA and the CRP the attested copy of the very same document is filed

before the trial Court along with the subject application and, therefore, there is no delay in filing the document.

10. Learned counsel for the 1st defendant relied upon the decision in Kalva Boddiah (died) per Lrs and other v. Kalva Boddiah (died) per Lrs and others [2018(3) HLT 454] in support of the proposition that no evidence can be allowed to be adduced in matters which are neither pleaded nor put in issue. He also placed reliance on the decision of the Supreme Court in B. Madhuri Goud v. B. Damodar Reddy [2012(0) SCJ Online (SC) 1413] wherein the subject matter is request for condonation of delay of 1236 days in filing the appeal against the decree & judgment of the trial Court.

11. I have gone through the decisions cited by both the sides. A perusal of the decisions would show that the decisions in the cited cases are rendered having regard to the facts peculiar to the said cases. It is also settled law that application of the present nature has to be decided on the facts of the case on hand.

12. I have given earnest consideration to the facts and submissions.

13 To begin with, plaintiff claims to be a tenant in the plaintiff schedule shops. The suit is filed against the 1st defendant for perpetual injunction restraining the 1st defendant, his men, agents, servants from in any way interfering with the plaintiff's peaceful possession and enjoyment of plaintiff schedule mentioned shops. The 1st defendant is resisting the suit. 2nd defendant – Commissioner, Chittoor Municipal Corporation, is the impleaded party. IA.No.477 of 2015 is an application for temporary injunction filed in the Original Suit. The said application was dismissed by the trial Court. The plaintiff, therefore, filed CMA.No.21 of 2016 on the file of IX Additional District Court, Chittoor. In the CMA, along with material papers, he filed the served copy of the subject proceedings of the Municipal Commissioner. However, on

the dismissal of the CMA, he filed CRP no.1976 of 2017. As already noted, this Court, while disposing of the CRP, directed both the parties to maintain *status quo*. Thus, the present document is not filed for being received as additional evidence in the CMA. In-fact, in the said CMA, the plaintiff filed IA.no.14 of 2016 for temporary injunction pending disposal of the CMA. The served copy of the proceeding in question is filed along with that application for temporary injunction. Therefore, the contention that the Additional District Court refused to receive the said document on file as being sought to be canvassed by the 1st defendant is not correct. Moreover, the present document is an attested true copy of the original, which is a public document; and, it is a proceeding of the Commissioner that was issued subsequent to the institution of the suit. After the CRP no.1976 of 2017 was disposed of by this Court, on 04.08.2017, the subject application was filed along with the subject document. The matter is still at the stage of trial before the trial Court. The subject document is the attested copy of a public document issued by another public officer of the Corporation. Hence, this Court is of the considered view that the plaintiff shall be given a fair opportunity to file the document to substantiate his case, more particularly when it appears that the document may be relevant to decide the real issue in controversy. Further, a plausible explanation was offered for not filing the document at an earlier stage of the matter. When the Court is of the considered view that if the document is permitted to be placed on record, the trial Court would be in a better position to effectively adjudicate the *lis* and that such a course would sub-serve the ends of justice, the Court would receive the document and would direct the Court below to consider its admissibility and probative value at a later stage. In the well considered view of this Court, at the time of considering requests to grant necessary leave and receive documents on file, the Court will only consider the aspect of delay in filing the documents and the further short question as to

whether or not any case is made out for granting leave; but, the Court will not consider the probative value of the documents filed along with the petition. It is settled law that if the documents are found to be relevant to decide the real issue in the controversy and when the Court feels that interests of justice require that the documents may be received, then the court would receive the documents by exercising the judicious discretion and would consider their effect thereafter at a later stage. When such is the settled position and, when the document is being sought to be produced in the trial Court, which is the first Court, normally it would be received and an opportunity would be given to prove it and also to adduce rebuttal evidence, if any; and its relevance and effect would be considered while deciding the issues raised and involved in the original suit.

14. On the above analysis, this Court finds that the trial Court is not justified in refusing to receive the document and in not granting leave. Viewed thus, this Court finds that the order of the Court below brooks interference.

15. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.No.513 of 2018 in OS.No.224 of 2015 is allowed and leave is granted to the plaintiff to file the petition listed document. The said document is accordingly received on file subject to proof, admissibility and relevancy.

Considering the fact that there is already a direction to dispose of the suit expeditiously, it is made clear that the trial Court shall endeavour to dispose of the suit within two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

20.12.2018
Vjl

