

**HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**C.R.P.Nos.5444 & 5449 of 2017**

**COMMON ORDER:**

Heard the learned counsel for the petitioners and Sri Sharad Shanghi, learned counsel for the respondents.

2. Petitioners in both these Civil Revision Petitions are defendant Nos.1 and 2 in the suit which was filed by 1<sup>st</sup> respondent against them for permanent injunction.

3. Written Statement was filed by the petitioners in the suit stating that 1<sup>st</sup> respondent was not in possession and enjoyment of the suit schedule property.

4. It is not in dispute that copies of No.3 Adangal for the faslies 1412 to 1414 issued by the Mandal Revenur Officer, G.D.Nellore and also No.3 Adangal issued by Panchayat Secretary from the year 2006 had been filed along with Written Statement by the petitioners and they were marked as Exs.B-1 and B-2 in the injunction application filed by the 1<sup>st</sup> respondent. However by oversight, these documents were not marked during the evidence of 1<sup>st</sup> defendant which took place in 2016.

5. After realizing this lapse, the petitioners filed I.A.No.403 of 2017 under Order 18 Rule 17 CPC to recall the petitioners for marking of the said documents and I.A.No.402 of 2017 under Section

151 CPC to reopen the evidence for marking the said documents through D.W.1.

6. These applications were opposed by respondent Nos.2 to 5 who contended that there is no truth in the plea of the petitioners that due to oversight these documents were not marked. It is asserted that it is deliberate act on petitioners in not marking the documents.

7. By separate orders dt.28-08-2017, the Court below dismissed both the applications. It held that main suit itself is coming for further arguments on behalf of the petitioners, that there is no mention of the documents now sought to be marked in the chief examination affidavit of D.W.1 and that oversight in marking those documents cannot be a ground to allow these applications at this stage.

8. Assailing the same, these Civil Revision Petitions are filed.

9. Learned counsel for the petitioners contended that it is not as if these documents are now being produced for the first time before the Court below, that they were already filed along with the written statement and they were already on record, and they had been marked in the interim injunction application also, but due to oversight, they were not marked at the time when defendants' evidence was being recorded and that there was no deliberate omission on their part.

10. Learned counsel for the respondents however contends that once arguments are over, the case cannot be reopened on the ground of mistake and oversight and there was deliberate act of the petitioners in not marking the said documents.

11. The contention of the petitioners that the documents in question had been filed along with the Written Statement is not denied by the respondents. It is also not denied that these documents had been marked in the interim injunction application. These documents are important to the petitioners in the sense that they would establish as to who was in possession of the property on the date those documents were issued. If these documents had not already been filed, but were being produced for the first time along with the application in question, one can blame the petitioners for their negligence, but that is not the case. It appears to be a *bonafide* mistake on the part of the petitioners in not getting them marked during the course of evidence of the defendants. Merely because the applications were filed after the arguments were heard in part, they cannot be denied an opportunity to mark these documents by reopening their evidence.

12. Therefore, the orders passed by the Court below rejecting the I.A.Nos.402 and 403 of 2017 cannot be sustained; they are accordingly set aside and both the Civil Revision Petitions are allowed; the evidence of the petitioners/defendants is reopened; they are given opportunity to mark these documents in their evidence; and

the respondents are given opportunity to cross examine them. This exercise shall be completed in two sittings and then the Court below can hear the arguments and decide the suit. No costs.

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

---

**JUSTICE M.S.RAMACHANDRA RAO**

Date: 23-01-2018  
kvr

