

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

Civil Revision Petition No.7315 of 2018

ORDER:

Aggrieved by the order, dated 31.10.2018, in I.A.No.447 of 2018 in O.S.No.4246 of 2004, passed by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, whereby the Learned Judge has dismissed the two Interlocutory Applications filed by him, viz., I.A.No.446 of 2018 for amending the plaint, and I.A.No.447 of 2018 for filing the original release deed, the certified copy of the notice under Section 91/160 Cr.P.C., the certified copy of the FIR in Crime No.79 of 2018 and bank statements, Mr.Roopam Mulchand Shah, the petitioner, has preferred this Civil Revision Petition. The present petition is concerned only with the dismissal of I.A.No.447 of 2018, filed under Order VII Rule 14(3) CPC, for bringing on record the documents mentioned hereinabove.

Mr.V.Venkata Subrahmanyam, the learned counsel for the petitioner, has concentrated only in arguing against the non-bringing of the original release deed, allegedly executed by the defendant No.1 in favour of the petitioner.

Briefly stated the facts of the case are that on 21.12.2004, the petitioner filed a suit for declaration and for recovery of possession against his mother, the defendant No.1, and his brother, the defendant No.2. In his plaint, he claimed to be absolute owner of the suit schedule property, namely Flat No.401, 3rd Floor, Sai Bafna Towers, Kruparam Bagh, Sultan Bazaar, Hyderabad. After filing the suit, on 24.11.2006 the issues were settled. Neither at the time of filing of the suit, nor even

subsequently, the petitioner claimed that there was a sale deed, dated 07.06.2002, which was duly registered on 21.06.2002, whereby his mother had released 50% of the share in favour of the petitioner. It is only after a lapse of fourteen years that the application, namely I.A.No.447 of 2018, was filed before the learned trial Court. However, by the impugned order, the learned trial Court has rejected the application. Hence, this revision before this Court.

Mr.V.Venkata Subrahmanyam, the learned counsel for the petitioner has pleaded firstly, that the said release deed is crucial for deciding the case. For, it is the said release deed which clearly established that the petitioner is the absolute owner of the suit schedule property. Secondly, although, the petitioner had given the copy of the release deed to his initial advocate namely Mr.D.P.Jaiswal, but since Mr.D.P.Jaiswal did not file copy of the release deed along with the plaint, it is only upon his death that the petitioner has been able to retrieve the said document. The petitioner wants to place the said document before the learned trial Court. Since the document is a crucial one, the interim application ought to have been allowed by the learned trial Court. Therefore, the impugned order deserves to be set aside by this Court.

Heard Mr.V.Venkata Subrahmnaym, the learned counsel for the petitioner, and perused the impugned order.

A perusal of the impugned order reveals that the learned trial Court has clearly noticed the fact that the suit was filed on 21.12.2004 for declaration and for recovery of the possession of the suit schedule property. In the plaint, the plaintiff pleaded that he

is the absolute owner of the suit schedule property. In the plaint, he neither mentioned the fact, that the property was bought by him along with his mother, the defendant No.1 nor that his mother, has issued the release deed on 21.06.2002, in his favour, releasing 50% of the share in the suit schedule property. It is only after an inordinate delay of fourteen years that a new story has been created by the petitioner.

Even the explanation that he has given the said document to his initial advocate, Mr.D.P.Jaiswal, is bereft of details. For, the petitioner has neither informed the Court as to the date on which the document was given to Mr.D.P.Jaiswal, the date on which Mr.D.P.Jaiswal expired, and the date on which the document was discovered in the office of Mr.D.P.Jaiswal. Since, this claim is bereft of vital details, the learned trial Court was justified in concluding that it is an after-thought in order to explain the inordinate delay of fourteen years.

The learned trial Court was also justified in holding that the petitioner cannot be permitted to blow hot and cold. On the one hand, he claims that he is the absolute owner, and yet, on the other hand, that the property was bought in his own name and in the name of his mother. Subsequently, the release deed was executed by his mother in his favour.

Although, the document can be brought on record even after the trial has commenced, but provided that the Court is convinced that inspite of due diligence, the party could not have had access to the document, and the due diligence is apparent from the record. However, the petitioner has failed to give any cogent reasons, except fanciful stories, about the fact as to how a

document of 2002 could not be produced before the learned trial Court till 2018. Thus, the learned trial Court was certainly justified in dismissing the interim application filed by the petitioner.

For the reasons stated above, this Court does not find any illegality, or perversity in the impugned order warranting interference by this Court. Thus, the Civil Revision Petition is hereby dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

Date:21.12.2018.

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RAGHVENDRA SINGH CHAUHAN, J.

