

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.7299 OF 2017

Dated:09.03.2018

Between:

Gandam Kumaraswamy,
S/o. Late Sri Kommalu,
Aged 48 years, Occ: Hamali,
R/o.M.No.46-3-66, (Old GP.No.3-49),
Balaji Nagar, Enumammula, Warangal City .. Petitioner

And

Smt. Thurpati Yellamma,
W/o. Sri Late Kommalu,
Aged 62 years, Occ: Household
work, R/o.H.No.3-62, Balaji Nagar,
Enumammula, Warangal City .. Respondent



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**CIVIL REVISION PETITION No.7299 OF 2017****ORDER:**

Petitioner herein is the defendant. Respondent/plaintiff instituted suit in O.S.No.370 of 2010 on the file of II Additional Junior Civil Judge, Warangal, seeking injunction on the suit schedule property to an extent of 266 sq. yards bearing House No.3-62, Balaji Nagar, Enumammula Village, Warangal City.

2. According to the petitioner, out of 266 sq. yards, husband of the plaintiff and her brother-in-law Sri Thurupati Lalaiah sold 133¼ sq. yards of land by way of an agreement of sale entered on 14.07.1991 and possession was also vested in the petitioner. Petitioner has pleaded this fact in written statement. However, agreement on which reliance was placed was not filed along with the written statement. At the stage of recording evidence of DW.2, petitioner filed I.A.No.708 of 2017 under Order VIII Rule 1 (a) C.P.C. praying to receive simple sale deed dated 14.07.1991. This plea of the petitioner was opposed by the respondent/plaintiff.

3. Learned II Additional Junior Civil Judge, Warangal, by order dated 02.11.2017, rejected the petition holding that there was no pleading in the written statement that he has pledged the document for loan; the document was in possession of the petitioner and therefore petitioner ought to have filed the document along with written statement.

4. Learned counsel for the petitioner, taking through the pleadings in the written statement, would contend that all along

stand of petitioner is property to an extent of 133¼ sq. yards was sold to him on 14.07.1991 and since then he is in possession and enjoyment of the same. In support of the said plea, petitioner intend to present this document and though the said document is crucial for the issue to be decided in the suit for injunction, the trial Court erred in not granting the relief.

5. Per contra, learned counsel for the respondent/plaintiff submits that nothing prevented the petitioner in presenting the said document at the initial stage and therefore there is no error in the decision arrived at by the trial Court.

6. It is no doubt true that the parties to the litigation should be diligent and it is mandatory for the defendant to take the pleas as available to him in law at the time of filing of the written statement and file documents relied by him. Except with leave of the Court, the defendant cannot file any document after filing of written statement. However, in the given circumstances, at the discretion of the trial Court, it is permissible to allow filing of any document at a later stage of the proceedings of the suit.

7. As seen from the order of the trial Court, the case is at the stage of recording of evidence of DW.2. The suit is filed for injunction. In this regard, two primary requirements to grant injunction are *prima facie* ownership and possession. To disprove the contention, the sale deed dated 14.07.1991 is an important document for consideration. The presentation of the document is to aid the trial Court to come to appropriate decision in the interest of justice. It is seen from the pleadings in the written statement that the stand of the petitioner/defendant is that the property was

purchased long ago and he is in possession of the same and has referred to the so called document in the written statement. He is not trying to introduce some new plea supported by a document which was not referred to earlier. The trial Court ought not to have dismissed the application.

8. However, having regard to the delay in seeking to present the document, the petitioner shall be mulcted with costs of Rs.3,000/-.

9. The Civil Revision Petition is allowed. As a consequence, I.A.No.708 of 2017 is allowed subject to the petitioner paying costs of Rs.3,000/- (Rupees three thousand only) to the respondent/plaintiff within a period of two weeks from today. However, it is always open to the plaintiff to raise objections on admissibility of the document.

Miscellaneous petitions, if any, filed in this Civil Revision Petition shall stand closed.

P. NAVEEN RAO, J

Date:09.03.2018

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