

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

C.R.P. No.582 of 2018

O R D E R:

This Revision is filed under Article 227 of Constitution of India challenging the order dt. 13.11.2017 in I.A.No.4962 of 2017 in O.S.No.406 of 2003 of the Chief Judge, City Civil Court, Hyderabad.

2. Petitioners herein are the defendants 3 and 5.

3. The said suit was filed by the 1st respondent against the petitioners and respondents 2 to 4 for partition and separate possession of 1/4th share of A and B schedule properties.

4. In the written statement filed by the 2nd defendant/3rd respondent, he had taken the plea that there were other properties which are liable for partition, but they had been omitted from the plaint schedule filed by the 1st respondent, and they are also required to be partitioned by inclusion in the plaint schedule.

5. He also mentioned that the B schedule property is subject matter of CCCA.No.69 of 1990 pending in the High Court of erstwhile Andhra Pradesh State.

6. When the matter was coming up for cross-examination of P.W.1, petitioners/D3 and D5 through counsel got served a notice dated 23.10.2017 on the 3rd respondent/2nd defendant, and the 1st respondent/plaintiff invoking Order 11 Rule 15

and 16 r/w Section 30 of CPC for production of the following documents:

“1. All and sundry documents in respect of various properties mentioned in the additional written statement of the 2nd defendant.

2. All and sundry documents pertaining to the previous civil suits contested by Late B. Ramulu and his siblings and step brothers etc., comprising of pleadings and judgments and decrees and orders etc., along with the exhibits marked in the said civil suits.

3. The entire financial record of Partnership Firm M/s. Prakash paints from A to Z along with the audited income tax and commercial tax returns and proof of each and every entry in the said Financial record w.e.f. 31.03.2000 till today.

4. All documents to prove payment of her contribution towards the capital of the Partnership firm M/s. Prakash Paints by the 4th Defendant herein along with the proof of the relevant entries relating to the alleged capital contribution by the 4th Defendant as per the mandate of Section 34 of the Indian Evidence Act, 1872/

5. All documents to prove the existence of the nucleus of the alleged ‘ancestral property’.”

7. After service of the said notice, petitioners filed I.A.No.4962 of 2017 to receive the said statutory notice on behalf of the petitioners contending that such notice dated 23.10.2017 was served on the 1st respondent and the 3rd respondent to produce the said documents and it should be received invoking order 8 Rule 1-A (3) CPC.

8. Counter affidavit was filed by the 3rd respondent/2nd defendant stating that the application is not maintainable as the procedure under Order 11 CPC has not been followed.

9. The 4th respondent adopted the said counter of the 3rd respondent/2nd defendant.

10. By order dated 13.11.2017, the Court below dismissed the said application stating that considering the stage of the case and nature of the documents sought by the petitioners, with a condition that they shall be prohibited from filing of the documents at a later stage, the petition itself is to be dismissed as not maintainable.

11. Challenging the same, this Revision is filed.

12. Counsel for the petitioners contended that the said document ought to have been received by the Court and the failure of the Court to receive has caused great prejudice to the petitioners. He also relied on Section 106 of Indian Evidence Act, 1872 and contended that the documents sought by the petitioners are within the knowledge of the 3rd respondent/2nd defendant and therefore he should be directed to produce the same.

13. He also placed reliance on the judgment of the Supreme Court in **Gopal Krishnaji Ketkar v. Mohammed Haji Latif**

and Others¹ wherein the Supreme Court had observed that if a party in possession of best evidence which would throw light on the issue in controversy is withholding it, Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him.

14. He also relied on judgment of the Supreme Court reported in **Union of India and another v. Deoki Nandan Aggarwal**² wherein the Supreme Court observed that it is not the duty of the Court whether to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The Supreme Court also observed that the Court cannot add words to a statute or read words into it which are not there. Assuming that there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency.

15. Counsel for the respondents refuted the said contentions and supported the order passed by the Court below.

16. Admittedly, the suit is of the year, 2003 and in 2017 it had come up for cross-examination of P.W.1 i.e., 14 years

¹ AIR 1968 SC 1413

² AIR 1992 SC 96

later. Other issues have been framed in the suit and in fact the 1st defendant/2nd respondent had died pending suit.

17. The documents which the petitioners seek production from the 3rd respondent and the 1st respondent are set out in the notice dated 23.10.2017 extracted above.

18. According to me, if those documents are relevant for consideration in the suit to prove the case of the 3rd respondent or the 1st respondent, and if they are not produced, the Court may draw adverse inference against the said persons and that is what has been held by the Supreme Court in **Gopal Krishnaji Ketkar's case (1 supra)**.

19. The further contention of the counsel for the petitioners that the Court cannot shut down the petitioners from bringing the said notice dated 23.10.2017 on record is without any merit because if the document sought are not produced by the parties, who would benefit by their production, and an adverse inference may be drawn by the Court against them, no useful purpose would be served by bringing the notice dated 23.10.2017 on record.

20. I, therefore, do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of Constitution of India.

21. Civil Revision Petition fails and is accordingly dismissed.

No order as to costs.

22. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

18.04.2019

dv

