

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

CIVIL REVISION PETITION NO.122 OF 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 27.11.2017 in I.A.No.977 of 2017 in O.S.No.1186 of 2009 on the file of the II Additional Junior Civil Judge at Warangal.

Petitioners herein are the defendants in the suit.

Respondent/plaintiff filed the said suit against the petitioners for perpetual injunction restraining the petitioners from interfering with the respondent's alleged possession and enjoyment of the suit schedule property.

Written statement was filed by the petitioners opposing the suit claim. Along with the written statement only certified copies of original sale deed document No.6764/81, urban land ceiling document of one Satyavathi, original sale deed document No.1174/97 dated 10.04.1997, location sketch and office copy of the legal notice dated 27.02.2015 were filed.

After the trial was commenced and evidence on the side of the respondent was concluded and the case was posted for evidence on the part of the petitioners, they filed originals of the above documents along with I.A.No.977 of 2017 invoking Order VIII Rule 1A of the Code of Civil Procedure, 1908 (CPC) stating that these originals were not traced out when written statement was filed and so only certified

copies of the originals were filed at that time and they ought to be received.

Counter affidavit was filed by the respondent opposing the said application contending that the cause shown by the petitioners is not a reasonable cause. It is also contended that the documents now filed by the petitioners are created documents. It is also alleged that if the originals are in the custody of the petitioners, they should have filed the same with the written statement and the reason now assigned is not even mentioned in the written statement filed by the petitioners.

By order dated 27.11.2017, the Court below dismissed the said application. It observed that the record of the suit does not indicate that even certified copies of the documents now sought to be filed were filed earlier by the petitioner. It observed that the petitioners seek to rely on the documents now sought to be filed in their defence and the reason assigned for not filing the documents earlier cannot be accepted. While the Court below felt that the documents are relevant for proper adjudication of the suit, it held that since they were not filed along with the written statement and no valid reason was given for filing it later, the application has to be rejected.

Assailing the same, this Revision is filed.

Counsel for petitioners contended that even the trial Court felt that the documents now sought to be filed are relevant for proper adjudication of the suit and so accepting that there is a *bona fide* mistake on the part of the petitioners, on payment of costs, at least these documents may be received.

Counsel for the respondent supported the order passed by the Court below.

Order VIII Rule 1A(1) CPC provides that if the defendant bases his defence on a document or relies upon any document in his possession or power in support of his defence, he should enter such document in a list and produce it in the Court when the written statement is presented by him, and shall at the same time deliver the document and a copy thereof along with the written statement. Clause (2) states that if any such document is not in possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is. Clause (3) states that a document or a copy thereof not filed with the written statement under this rule, shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.

Therefore, unless there is a valid reason assigned by the defendant for filing the document along with the written statement, he cannot be permitted to file documents on which he bases his defence subsequent to commencement of the trial.

In the instant case, nowhere in the written statement did the petitioners state that they could not trace out the originals of the documents they now seek to file. They did not file any certified copies of the said documents along with the written statement. If the reason assigned i.e. that the documents are traced out recently, is accepted, in no case can Order VIII Rule 1A CPC be enforced. May be the Court below was of the view that the documents have relevancy

for adjudication in the suit but merely on the said ground, the application cannot be ordered. It was incumbent on the part of the petitioners to also notice the importance of the said documents and ensure that they are filed along with the written statement.

If they are negligent in doing so at the time of filing their written statement, they cannot be permitted to file them at a later stage.

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

Revision is, accordingly, dismissed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

31st July 2019
RRB