

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

C.R.P.No.184 of 2019

ORDER:

This Revision is filed assailing the order dt.03.01.2019 in I.A.No.521 of 2018 in O.S.No.65 of 2012 of the Senior Civil Judge, Jangaon, Warangal District.

2. Petitioner herein is the 9th defendant in the above suit, which was filed by the 1st respondent/plaintiff for partition of the plaint schedule properties 1 & 2, and claiming 1/6th share therein.

3. In the plaint, the 1st respondent/plaintiff alleged that her late father was the owner and possessor of the plaint schedule properties, that he had died on 15.08.1978, that thereafter, 1st defendant/2nd respondent, who is her mother, and other family members did not take care of the 1st respondent and alienated the plaint schedule properties and misappropriated the sale proceeds. She contended that on the death of her father, she and other heirs are in joint possession as joint-owners.

4. Petitioner herein claimed to have purchased Item-2 of the plaint schedule properties under registered Sale Deed executed in its favour in 1985 from the defendants in the suit and specifically contended that ever since the purchase it has been in continuous possession of the property as a sole and rightful owner.

5. However, along with the Written Statement, it appears no documents had been filed by the petitioner.

6. Thereafter, trial commenced and the evidence of the 1st respondent was completed. The evidence of the defendants is being taken up and at that stage, petitioner's witness was examined and cross-examined as DW-4 and questions were put about the possession of the petitioner to the said witness.

7. At that stage, petitioner realized that it had not filed any material in support of its pleading about the possession and filed I.A.No.521 of 2018 under Order VII Rule 14(3) of CPC and sought to file 28 documents.

8. In the affidavit filed in support of the said I.A., it was merely stated that the 1st respondent plea about joint possession was false and the petitioner's possession was reflected in the documents sought to be filed in the said I.A., and because of the denial by the 1st respondent, after verifying office records, the documents are sought to be filed. No reason is assigned therein as to why the said documents could not be filed along with the Written Statement.

9. Though no counter was filed by the 1st respondent/plaintiff the Court below rejected the said application. It noted that the suit had been pending since long time, that the Written Statement of the petitioner/9th defendant was filed on 27.04.2013, that it was returned with objections and was again submitted on

01.06.2013, but no list of documents was filed. It observed that after the examination of the petitioner's witness, DW-4, this application has been filed to cover-up the lacuna in the evidence of the said witness and nowhere the reason for not filing the said documents along with the Written Statement, had been stated.

10. Assailing the same this Revision is filed.

11. Counsel for petitioner contended that though the possession of the 1st respondent was disputed in the Written Statement filed by the petitioner, by over sight, the documents in question could not be filed along with the Written Statement, and in fact possession of the property is not with the 1st respondent or other family members of the 1st respondent, and is only with the petitioner, and the petitioner should be given an opportunity to file the said documents.

12. As per the amendment brought to the Civil Procedure Code by Act 46 of 1999 with effect from 01.07.2002 introducing Order VIII Rule 1A of CPC, it is incumbent on the part of the defendant to file all documents he wishes to rely along with the Written Statement and if not, he has to seek leave of the Court, and unless the leave of the Court is granted, he cannot be permitted to file such documents at a later point of time.

13. It appears that this provision of law has not been noticed by the counsel for petitioner in the Court below. When there is specific plea raised by the 1st respondent about the possession

and there is a denial by the petitioner in its Written Statement of the said fact, the petitioner ought to have filed all the documents, which are now sought to be produced by the petitioner, along with the Written Statement. Petitioner has clearly been negligent in that regard and in fact, in the affidavit filed in support of I.A.No.521 of 2018 in the Court below no reason is assigned for not filing the said documents along with the Written Statement. Therefore, petitioner is not entitled to any indulgence and the Court below did not commit any error of jurisdiction in refusing to allow I.A.No.521 of 2018.

14. I therefore do not find any merit in this Civil Revision Petition and it is dismissed at the admission stage. No order as to costs.

15. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

01st February, 2019.

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M.S. RAMACHANDRA RAO, J