

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

C.R.P.No.228 of 2019

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dt.02-01-2019 in I.A.No.5758 of 2018 in O.S.No.695 of 2017 of the Chief Judge, City Civil Court, Hyderabad.

2. Petitioners are defendants in the said suit.

3. The suit was filed by respondent No.1 against the petitioners and other respondents for permanent injunction restraining the petitioners and respondent Nos.2 to 5 from interfering with 1st respondent's alleged possession and enjoyment of the plaint schedule property.

4. The 1st respondent claimed to have purchased the suit schedule property under a registered sale deed dt.09-02-1963 being document No.371/1963 and he filed only a copy of the said sale deed, but did not file the original sale deed undertaking to file the same at the time of the trial. He also mentioned in the plaint that he applied to the Sub Registrar Office for issuance of certified copy of the registered sale deed, but the office of the S.R.O. had issued memo on 18-01-2017 that the document No.371/1963 copied in Book-I, Volume-84, Pages 128 is in a torn condition, and he is not in a position to issue certified copy of the same.

5. Written Statement was filed by the petitioners opposing the suit claim. They specifically denied that the 1st respondent purchased the suit schedule property under document No.371/1963 dt.09-02-1963 and contended that the alleged sale deed was fabricated to usurp the suit property. They also contended that the 1st respondent mischievously did not file the original of the sale deed along with the plaint and it does not disclose the reasons for withholding of the original sale deed dt.09-02-1963.

6. It appears that the petitioners herein approached the District Registrar, Red Hills, for a certified copy of the document bearing No.371/1963 in Book No.1, Volume 84, Pages 8 to 9. But the officials of the said office issued two letters:- (i) a letter No.395/2017 dt.12-12-2017 stating that they cannot issue it for the reason that it was in a torn condition and (ii) another letter No.141/2018 dt.13-04-2018 reiterating the above fact but enclosing certified copy of a plan showing plot Nos.18 & 19 in Sy. No.30/2, behind Walker Town, Secunderabad, attached to the document bearing No.371/1963.

7. The petitioners then filed I.A.No.5758 of 2018 under Order VIII Rule 1-A (3) CPC requesting the Court to receive both these letters along with the certified copy of the map supplied by the District Registrar, Red Hills.

8. Counter affidavit was filed by the 1st respondent opposing the receipt of these documents. He contended that the plan

now sought to be filed does not relate to the suit schedule property which is, in fact, located not in Secunderabad but in Shaikpet village. It was contended that the petitioners, knowing the same, created and obtained the certified copy of the plan and submitted it to the Court to create problems to the 1st respondent.

9. By order dt.02-01-2019, the Court below rejected the said application.

10. The Court below observed that in the letter dt.12-12-2017, the Joint Sub Registrar-I stated that the pages of the Volume had been torn into pieces and he is not in a position to issue certified copy, but in the letter dt.13-04-2018, while reiterating the same, he had given a copy of the plan, but the plan pertains to property in Secunderabad and not to the suit schedule property located in Shaikpet village of Hyderabad. It also observed that the boundaries of the property shown in the plan are different and the learned counsel for 1st respondent had objected to its receipt and so it cannot be received.

11. Assailing the same, this Revision Petition is filed by the petitioners.

12. Learned counsel for the petitioners contended that under Order VIII Rule 1-A (3), the petitioners had filed I.A.No.5758 of 2018 to receive the said document which had come into the possession of the petitioners after the filing of the suit and the reasons recorded by

the Court below in refusing to receive the said documents are unsustainable. He also stated that the very case of the petitioners is that the 1st respondent is relying on the said document purporting to be a sale deed, but which is in fact a lease deed of land, which is not related to the plaint schedule property, and by misleading the Court, is drawing to obtain a decree in the suit; and if the petitioners are prevented from filing the said document, it would cause grave injustice.

13. Learned counsel for the respondents on the other hand supported the reasoning of the Court below and said that the plan in question relates to different property and shows the parties as lesser and lessee instead of vendor and vendee and the Court below was right in refusing to receive it.

14. No doubt as per order VIII Rule I-A CPC, normally a defendant who relies upon a document in support of his defence has to file it along with Written Statement, but under sub Rule (3), he is entitled to seek leave of the Court to file documents which had come into his possession later and request the Court to receive them in evidence.

15. In the instant case, the documents in question i.e. letter dt.12-12-2017 and the letter dt.13-04-2018 as well as the plan have come into the possession of the petitioners after the suit was filed.

Therefore, the Court below could not have refused to receive the said documents.

16. When it is the specific contention of the petitioners that the original sale deed was suppressed by the 1st respondent and was not filed along with the plaint, and the photo copy of the sale deed filed along with the plaint was a fabrication to usurp the suit schedule property, the petitioners cannot be denied an opportunity to establish the said facts by relying on the documents now issued by the office of the District Registrar, Red hills. The reasoning of the Court below is perverse and grave injustice would be caused to the petitioners, if the application I.A.No.5758 of 2018 is not allowed.

17. In this view of the matter, the impugned order cannot be sustained. It is accordingly set aside, and I.A.No.5758 of 2018 is allowed; and the Civil Revision Petition is consequently allowed. No costs.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-02-2019
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