

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CIVIL REVISION PETITION No.686 of 2019**

**ORDER :**

This Civil Revision Petition is filed challenging the order dt.02-01-2019 of the Chief Judge, City Civil Court, Hyderabad in O.S. (SR) No.21136 of 2018.

2. Petitioners had presented a plaint before the said Court seeking partition of the plaint schedule properties and claiming 2/7<sup>th</sup> share to the petitioners.

3. Along with the plaint, certain documents were filed by petitioners.

4. On 05-12-2018, the Court below rejected the plaint with following objections:

*“The office objections are as follows:*

*‘Proof of ownership to be filed in E.C. owner’s name reflecting as A.Khaja Mohiuddin’.*

5. Learned counsel for petitioners then replied and resubmitted the plaint with following endorsement:

*“1. Filed C.C. of sale deed.*

*2. Gift settlement is in the custody of defendant.*

*Resubmitted file along with citation.*

*Please call on Bench.*

*Hence, the matter may be called on Bench for hearing.”*

6. Matter was then listed before the Bench on 05-12-2018. It was then adjourned to 28-12-2018. On that day, the matter was heard and directed to be listed on 02-01-2019. On 02-01-2019, again the plaint was returned with the following endorsement:

*“Perused the plaint and the documents filed along with the plaint. The office took an objection viz., ‘Proof of ownership to be filed in E.C., owner’s name reflecting as A.Khaja Mohiuddin”.*

*The counsel for the plaintiff while re-presenting filed C.C., of sale deed and mentioned that gift settlement is in the custody of defendant.*

*The plaintiff is directed to comply with the objection and file the ownership documents.*

*Hence, returned for filing proof of ownership document regarding the suit schedule property. Time (7) days.”*

7. Learned counsel for petitioners contends that the view of the Court below cannot be sustained and placed reliance on the judgment of this Court in **Mohd. Osman Ali Vs. Second Junior Civil Judge, City Civil Court, Hyderabad and another<sup>1</sup> 2010(14) ALD 273.**

8. In the said judgment, this Court observed that when a party files a suit, in accordance with the procedure prescribed under the Code of Civil Procedure and Civil Rules of Practice, it is no part of the duty of the Court to examine, at the stage of scrutiny and registration of the suit, whether the plaintiff has adduced sufficient documentary evidence in support of his prayer in the suit, that if the plaintiff fails to file proper material to substantiate his pleas, he will be doing so at his

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<sup>1</sup> 2010 (4) ALD 273

peril, but the Court cannot, at the scrutiny stage, insist on the plaintiff to file the documents, which, in its opinion, are relevant for granting relief.

9. In view of this settled legal position, I am of the opinion that the Court below was not correct in returning the plaint insisting on the petitioners for filing proof of ownership in the form of Encumbrance Certificate reflecting the name of A.Khaja Mohiuddin particularly when the petitioners had filed a certified copy of the sale deed in the name of A.Khaja Mohiuddin and stated that the gift settlement deed is in the custody of the defendants.

10. Therefore, the order dt.02-01-2019 in O.S. (SR) No.21136 of 2018 is set aside; the Civil Revision Petition is allowed; and the Court below is directed to proceed to number the plaint, if it is otherwise in order, without insisting of filing of the Encumbrance Certificate containing the name of A.Khaja Mohiuddin. No costs.

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

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 04-04-2019

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