

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NOS.1359, 1350, 1376 & 1353 of 2019

COMMON ORDER :

These four revisions arise between the same parties out of the same suit and so they are being disposed of by this common order.

2. Petitioner in all these Revisions is the plaintiff in the above suit.
3. He filed the said suit against the respondents 1 and 2 in the Revisions for partition of the plaint schedule properties and for separate possession of 1/3rd share in the suit schedule property.
4. He filed I.A. No.162 of 2019 under Order VII Rule 14(3) CPC to receive certain documents; I.A. No.131 of 2019 to implead five persons as defendants 3 to 7 in the suit; I.A. No.132 of 2019 to reopen the suit; and I.A. No.133 of 2019 to recall P.W-1 for the purpose of marking the documents which are mentioned in I.A. No.162 of 2019.
5. The Court below by separate orders dismissed all the applications and challenging the same, these Revisions are filed.

CRP Nos.1359 of 2019, 1353 of 2019 and 1376 of 2019

6. It is the contention of the petitioner in all these Revisions that he had filed earlier I.A. No.332 of 2017 under Order VII Rule 14(3) CPC to receive documents, but the trial Court dismissed it on 24.11.2017; that he then challenged the said order by way of Revision in CRP No.144 of 2018; and in the said CRP, he had sought permission to withdraw I.A. No.332 of 2017 with liberty to file a fresh application in accordance with law; that such permission was accorded and the CRP was disposed of on

06.03.2018; and, therefore, he filed I.A. No.162 of 2019 to mark ten documents in respect of which he claimed to have got knowledge only on 10.11.2017. He claimed that he did not know about these documents at the time of filing of the suit and so he could not file at that time. He claimed that his father died on 08.05.2016 and at that time he found some documents and through those documents, he could trace out the other documents. He also stated that between the year 2000 and 2017, he was abroad for a considerable period of time and so these documents are required to be received. The documents which he sought to file are as under:

1.	21.01.1995	Original Simple Sale Deed executed by father of plaintiff selling the ancestral property
2.	07.03.1988	Original Simple Sale Deed purchased by father of plaintiff and his brother
3.	25.03.1995	Original Simple Sale Deed executed by vendor of suit land to father of plaintiff
4.	20.06.1997	Original Partition Deed executed by the father of plaintiff
5.	05.01.2001	Original Customer's Receipt showing the amount sent by plaintiff to his brother (D2)
6.	14.09.2001	Original Customer's Receipt showing the amount sent by plaintiff to his father (D1)
7.	23.11.2001	Original Customer's Receipt showing the amount sent by plaintiff to his brother (D2)
8.	21.12.2001	Original Customer's Receipt showing the amount sent by plaintiff to his brother (D2)
9.	20.09.2002	Original Customer's Receipt showing the amount sent by plaintiff to his father (D1)
10.	----	Electricity Pass Book in the name of D1

7. Counter-affidavit was filed by the respondents/defendants opposing this application. They contended that the petitioner was having knowledge of these documents and petitioner's plea that he had no

knowledge of them earlier cannot be believed. It is also contended that all these documents are fabricated documents and at a belated stage, these documents cannot be received in evidence.

8. In the order dt.30.04.2019 in I.A. No.162 of 2019, the Court below observed that there was no mention in the plaint or in the chief-examination affidavit by the petitioner that his father jointly purchased the plaint schedule property after selling Ac.0.39 gts of other land; that the only contention raised in the plaint is that the father of the petitioner had sold Ac.2.00 gts of land and contributed to the purchase of the suit schedule property. It also observed that in the present application I.A. No.162 of 2017, the petitioner had sought to file certain simple sale deeds to mark the same in evidence, and that this document would bring a whole the set of new facts on record which prejudice to the respondent, particularly when there was no mention about the purchases under these simple sale deeds. It observed that in the chief-examination affidavit filed by the petitioner, there was no whisper of any partition deed and the same is now brought up for the first time; that customary receipts showing the amount sent to the petitioner now sought to be filed relate to the year 2001-2002; and when petitioner himself claims that he sent the same to the 2nd defendant, he should explain what prevented him from filing them at the time of filing of the suit.

9. Assailing the same, the Civil Revision Petition No.1359 of 2019 is filed.

10. Counsel for the petitioner contended that the petitioner was not aware of the documents now sought to be filed and he came to know of the same only on 10.11.2017. It is his contention that the petitioner's

father died on 08.05.2016 and the petitioner then found some documents and through them he could trace out other documents.

11. Order VII Rule 14 CPC requires the plaintiff to file all the documents on which he relies on, along with the plaint, and to explain in whose custody the documents were if he was unable to file them at that time. The plaintiff is, however, permitted under Order VII Rule 14(3) CPC to file documents which ought to have been filed along with the plaint, subsequently, if leave is obtained by him for filing them at a later stage.

12. It has been held by this Court that grant of leave is not automatic and unless valid reasons are furnished for not filing documents along with the plaint, and in such circumstances, leave cannot be granted to file document at a later stage. The Court is not a post office to suffer mechanical orders to these applications.

13. Considering provisions in Sub-rule (3) of Rule 1A of Order VIII which are akin to Or.VII Rule 14(3), this Court has held in **Ravi Satish vs. Edala Durga Prasad and Ors**¹ that the said Rule permits the documents to be received only on leave being granted by the Court; grant of leave is not for the mere asking, nor is the Court a mere Post-Office to receive documents even in the absence of any reasons being furnished for failure to file the said documents along with the written statement; that though admissibility and proof of documents are matters which ought not to be gone into at the time of receipt of documents, the fact, however, remains that the leave sought for can only be granted on adequate reasons

¹ MANU/AP/0736/2009 = 2009 (3) ALT 236

being furnished justifying failure on the part of the applicant in not filing the documents along with the written statement earlier. It rejected the contention that no prejudice can be said to have been caused to the respondent/plaintiff .

14. This principle was reiterated in **Voruganti Narayana Rao vs. Bodla Rammurthy and Ors.**² The Court explained that Rules 1-A and 1-A(3) of Order VIII Code of Civil Procedure, were substituted by Act 46 of 1999 with effect from 01.07.2002. The object with which those Rules were amended was to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the Civil Court. The Parliament has thought it fit to stipulate time limits for the parties to file their defense and produce the documents along with the defense so that the cases can be disposed of without avoidable delays. This being the avowed object with which the above noted provisions are amended, Rule 1-A(3) of Order VIII Code of Civil Procedure, which on a literal interpretation appears to vest unlimited discretion with the Court, requires to be interpreted so as to advance the intendment of the legislation. The Court before which the Defendant produced the said documents after filing of the written statement, therefore, needs to be circumspect in examining whether proper reasons are assigned by the Defendant for not producing the documents along with the written statement. Unless the reasons assigned by the Defendant discloses sufficient cause for his failure to produce the documents within the time stipulated in Rule 1-A of Order VIII Code of Civil Procedure, the Court shall not permit the Defendant to file such documents later. Undoubtedly,

² 2011 (6) ALD 142

unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended.

15. It is important to note that this suit had, in fact, been filed in January, 2010 as O.S. No.4 of 2010 and had been renumbered as O.S. No.93 of 2014 on transfer to the Court of Junior Civil Judge at Husnabad. I.A. No.162 of 2019 had been filed on 28.03.2019, after the trial commenced and after the chief-examination affidavit of the petitioner has been filed, but before cross-examination of the petitioner was done by the defendants.

16. A look at the documents now sought to be filed indicate that these documents pertain to the period 1995 to 2002, they are of a period long prior to the filing of the suit. Most of these documents are in fact customary receipts showing amounts sent by the petitioner to his brother and father and so the petitioner cannot claim that he came to know about these documents only in 2017 after his father died.

17. The other four documents comprise three simple sale deeds and one partition deed. There is no mention about these documents in the plaint or in the chief-examination affidavit filed by the petitioner.

18. According to me, the reasons assigned by the petitioner for not filing the documents along with the plaint, do not appear to be valid or acceptable. Receiving these documents at the present stage when evidence in the suit is closed, would clearly cause grave prejudice to the respondents.

19. The fact that the petitioner was not in India for considerable period between 2000 and September 2017, he cannot take advantage of it.

Therefore, I do not find any error of jurisdiction in the order passed by the Court below in dismissing I.A. No.162 of 2019.

20. Consequently, there is no necessity to reopen the suit or to recall P.W-1 for the purpose of marking the above documents as was sought in I.A. No.132 of 2019 and I.A. No.133 of 2019 and in my opinion, the Court below rightly dismissed both those applications.

21. Therefore, CRP Nos.1359 of 2019, 1353 of 2019 and 1376 of 2019 are dismissed. No costs.

CRP No.1350 of 2019

22. Coming to CRP No.1350 of 2019, it arises out of an order dt.30.04.2019 passed in I.A. No.131 of 2019 whereby the petitioner wanted to implead five persons as defendants in the suit. According to him, they are also members of his family, though they do not have any right over the suit schedule property and they are necessary parties.

23. Counter-affidavit was filed by the petitioners opposing the said application stating that if the petitioner felt that these persons were necessary parties, he should have impleaded them at the time of filing of the suit itself and he cannot now seek to implead them.

24. By order dt.30.04.2019, the Court below dismissed the said application. It held that in the cross-examination of the petitioner, the petitioner had admitted that he had sisters who had right in the suit schedule property, and that he had not made them parties in the suit on the ground that he had given Ac.1.00 gts of land to one of the sisters, that they had given dowry for the other sister and she stated that she did not need any share in the suit schedule property. The Court below therefore

concluded that petitioner had full knowledge of the existence of the other co-sharers and had not deliberately made them parties on the ground that they were already given their due share. It held that even now it is still the contention of the petitioner that his sisters, who are now sought to be impleaded, do not have any right in the suit schedule property; and when he is not seeking any relief against the said members of his family, he ought to have explained why they ought to be impleaded.

25. Assailing the same, the Civil Revision Petition No.1350 of 2019 is filed.

26. Though Counsel for the petitioner sought to contend that all the proposed parties ought to have been allowed to be impleaded by the Court below, since they are his sisters and their children, the Court below rightly held that petitioner ought to have impleaded them as defendants in the suit when the suit was filed, if he felt that they are necessary parties; and since his plea is that the sisters are not entitled to any share in the plaint schedule property, he would not be seeking any relief against them and he did not explain why he wants them to be impleaded at this stage.

27. I, therefore, do not find any error of jurisdiction in the order passed by the Court below in I.A. No.131 of 2019 and therefore, the CRP No.1350 of 2019 is dismissed. No costs.

28. Therefore all the revisions are dismissed. No costs.

29. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.09.2019

MRKR