

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

C.R.P.No.s 1504 and 1521 of 2019

COMMON ORDER:

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

2. Petitioners in these two Revisions are plaintiffs in O.S.No.39 of 2014 on the file of the Junior Civil Judge-cum-VI Metropolitan Magistrate, Maheshwaram.

3. They filed the said suit for Perpetual Injunction against the respondent to restrain him from interfering with the alleged peaceful possession and enjoyment of the petitioners over the suit schedule property i.e., plot No.53 of extent 1,000 sq. yards consisting of two rooms situated in survey No.s 244, 204, 205 to 207, 209 and 217 of Mansanpally Village, Maheshwaram Mandal.

4. Petitioners contend that the 1st plaintiff purchased the subject property under registered Sale Deeds dt.27.02.2002 from M/s.GPR Housing Pvt. Ltd. According to them, they are in possession of the property from the date of purchase and have also erected two rooms therein. They alleged that the respondent is threatening to interfere with their possession of suit schedule property and so they filed the suit.

5. Written statement was filed by the respondent opposing the suit claim and specifically raising a contention that though M/s GPR Housing Pvt. Ltd. relies on a layout on 21.05.2001 as if it was issued by the Gram Panchayat, Manasanpally, there was no Resolution passed by the Members of the Gram Panchayat granting lay out.

6. Thereafter issues were framed, trial commenced and evidence of the petitioners was concluded.

7. Petitioners in their evidence have marked Ex.A5, a Resolution dt.28.04.2001 of the Gram Panchayat, Mansanpally.

8. Thereafter, respondent's evidence commenced, in which, he marked Ex.B40, a document issued by DW2 as In-Charge Secretary of the Gram Panchayat, Mansanpally, wherein he deposed contrary to Ex.A5.

9. Alleging that DW2 gave evidence on behalf of the respondent and issued Ex.B40 in collusion with the respondent, petitioners obtained copy of Ex.A5 from the Gram Panchayath, Mansanpally under the provisions of Right to Information Act, 2005.

10. Petitioners then filed *I.A.No.140 of 2019* seeking to summon the Secretary of the Gram Panchayat, Mansanpally to produce the record pertaining to Ex.A5 and to depose in respect of the same.

11. Counter was filed by the respondent opposing the said application. He contended that he filed Ex.B40 letter issued by the Panchayath Secretary dt.10.08.2009, Ex.s B32 to 35 DTCP final approvals, and Ex.B39 Conversion Certificate along with the written statement in 2009; that in 2005, the Gram Panchayat passed the Resolution recommending the grant of DTCP approval in respect of the land to the respondent; that basing on the recommendation of the Gram Panchayat and report of the Revenue Inspector, the DTCP authorities granted tentative approval in 2006 subject to development as per the DTCP norms; and that he developed the land as per the said approval and final approval was also granted in 2008.

12. He further alleged that after filing of the written statement, petitioners, in connivance with the Panchayat Secretary, created a Resolution dt.28.04.2001 and got it inserted in to the Panchayat Records and obtained a copy of it under Right to Information Act, 2005 behind the back of the respondent. He pointed out that in May, 2018, evidence of the petitioners was closed and the petitioners have not given any reason for non-examination of PW3. He alleged that his entire case is that neither PW1 nor vendor of the petitioners developed the land into plots and the Gram Panchayat also did not pass any Resolution and did not grant layout.

13. Along with I.A.No.140 of 2019, which was filed under Order XVI Rule 5 CPC, petitioners also filed I.A.No.139 of 2019 under Section 151 CPC to re-open the petitioners' side evidence to summon Secretary of Gram Panchayath, Mansanapally to give evidence on Ex.A5 and to produce the records before the Court which are in their custody in respect of Ex.A5, taking similar pleas as in I.A.No.140 of 2019.

14. Both these applications were rejected by the Court below by separate orders dt.08.05.2019. It held that the petitioners were aware of the stand of the respondent through the written statement filed by him, and after their evidence was concluded, and DW2 was examined by the respondent and he marked Ex.B40, petitioners have now filed these applications. It observed that petitioners did not choose to examine the Panchayat Secretary of Mansanapally Gram Panchayat when it was their turn to lead evidence in support of Ex.A5 marked by them. It therefore held that no case has been made out by the petitioners to re-open the case of the petitioners and to summon the Panchayat Secretary of Mansanapally Gram Panchayat for production of documents and give evidence with regard to Ex.A5.

15. Assailing the said orders, these Revisions are filed.

16. Counsel for the petitioners reiterated that grave prejudice would be caused to the petitioners, if they are not allowed to summon the Panchayat Secretary of Mansanapally Gram

Panchayat as their witness to produce the record in support of Ex.A5, as other side has already marked Ex.B.40 through DW2.

17. When the petitioners were aware of the stand taken by the respondent/defendant in the suit, that there was no sanction of the Gram Panchayat for the layout being relied upon by the petitioners, they ought to have examined the Panchayat Secretary of Mansanapally Gram Panchayat to corroborate their pleadings when it was their turn to lead evidence.

18. No valid explanation is offered why petitioners did not summon the Panchayat Secretary at that time.

19. In these circumstances, I do not find any error of jurisdiction in the orders passed by the Court below warranting interference by this Court with the said orders.

20. Accordingly, these Civil Revision Petitions fail and they are dismissed. No order as to costs.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

25th July, 2019.

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