

HONOURABLE JUSTICE G.SRI DEVI

CIVIL REVISION PETITION No. 2232 of 2019

ORDER:

This Civil Revision Petition is filed aggrieved by the order, dated 12.09.2019, passed in I.A.No.1385 of 2019 in O.P.No.786 of 2014 on the file of the Principal Judge, Family Court-cum-Additional Chief Judge at Hyderabad, wherein and whereunder an application filed under Section 30 (c) read with Order XI Rules 1 and 2 of C.P.C., seeking to permit the petitioner to serve the interrogatories on the 1st respondent, was dismissed.

The facts which led to filing of the present Civil Revision Petition are as under:

The petitioner herein filed O.P.No.786 of 2014 against the 1st respondent/ husband and the 2nd respondent/son (through 1st wife of the 1st respondent) for declaration and perpetual injunction in respect of half of the petition schedule property i.e., house bearing No.8-1-405/A/25, admeasuring 3334 square feet of built up area on Plot No.25 and 298 square yards in Sy.Nos. 318 and 319 at Dream Valley, Shaikpet, Hyderabad. During pendency of the O.P., the petitioner filed I.A.No.1385 of 2019 stating that the petitioner paid a total amount of Rs.83,11,000/- and the particulars of which were mentioned in the petition. Therefore, prayed to permit the petitioner to serve the following interrogatories on the 1st respondent:

1. Whether the 1st respondent accepts the payments made by the petitioner?
2. The petitioner and 1st respondent were living together till February, 2013 and he paid for the maintenance of the house. A question was asked to the 1st respondent in the cross examination "you pay the said amounts towards maintenance and other miscellaneous purposes". Therefore, the payment made by the 1st respondent for maintenance of house cannot be adjusted towards aforesaid payments made by the petitioner for house property.
3. The petitioner is staying in the petition schedule property and this was because of her contribution as aforesaid which is Rs.83,11,000/-.
4. The petitioner is not literate enough to understand the English language. Therefore, when Ex.P1 registered sale deed document No.1105 of 2011, dated 19.04.2011 was executed, the petitioner was assured that for tax purpose the sale deed was executed in his name and later he would transfer the same in the name of petitioner and petitioner should be witness. Subsequently the petitioner after verifying the contents of the sale deed through her son, it came to light that there is a recital. "The vendee hereby decided to covenant all his rights obtained by his sale deed relating to the said schedule property to his wife, Smt. Gullapalli Sobha Rani after his lifetime."
5. The respondent has taken advantage of petitioner's lack of knowledge of legal issues and her incapacity to understand the English language whereby the petitioner made to pay Rs.83,11,000/- assuring that the house will be her property.

6. That the respondent has huge income as Chartered Accountant and has no liabilities and therefore notwithstanding the result of the case the petitioner has to make a provision for her maintenance as well as for her medical treatments.

A counter affidavit came to be filed by the 1st respondent stating that the application has been filed at a belated stage and is not maintainable either on facts or on law. In the aforesaid case, trial has already been completed and arguments are under progress and with an intention to protract the litigation, the application has been filed. In fact, trial was completed one and half years back and after completion of trial and at the stage of arguments an amendment petition was filed seeking to amend the pleadings in the O.P., vide I.A.No.125 of 2018. The said I.A. was dismissed on 22.02.2018. Challenging the said order, the petitioner has preferred C.R.P.No. 2449 of 2018 and the same was dismissed by this Court vide orders dated 10.04.2019. The interrogatories that were sought are nothing but the amendments that were sought in I.A.No.125 of 2018. It is important to note that all the interrogatories that were sought in the petition were already questioned to the 1st respondent in his cross-examination. It is further stated that Section 30 of C.P.C. itself says that subject to conditions and limitations, the Court has power to order discovery and in the present case the interrogatories that are sought cannot be entertained as it does not fall under the ambit of

Section 30 or Section 30 (c) of C.P.C. and, therefore, prayed to dismiss the petition.

After considering the rival submissions, the trial Court dismissed the said petition. Challenging the same, the present Civil Revision Petition is filed.

Heard learned Counsel for the petitioner and learned Counsel for the respondents.

Learned Counsel for the petitioner submits that the petitioner filed her evidence as affidavit-in-chief-examination on 28.02.2017 and she was thoroughly cross-examined by the 1st respondent. The contents of chief and cross-examination of the petitioner proved that she paid the amounts, as contended by her, and the said amount comes to Rs.83,11,000/-. It is further submitted that the petitioner has been allowed to live in House No.8-1-415/A25 situated at Dream Valley, O.U.Colony, Shaikpet, Hyderabad. The said property was purchased by the 1st respondent from his own son i.e., 2nd respondent herein and the sale consideration was admittedly shown as Rs.63,00,000/-. In order to save the stamp duty and registration fee, false market value was given. According to the petitioner, the said property was purchased at Rs.1,42,00,000/-. It is further submitted that the amendment of the plaint to record the subsequent payments has nothing to do with the petition for seeking interrogatories as it is evident from the order of this Court in C.R.P.No.2449 of 2018. It is

also submitted that the learned Counsel for the respondents wrongly contended that they are answers, but not interrogatories. It is submitted that the aforesaid interrogatories are statements of facts, which require answers from the 1st respondent viz., the truth or otherwise of such statements. Therefore, this cannot be termed as answers. He relied on the judgment of the Apex Court in *Union of India v. Ibrahimuddin and another*¹ and judgment of this Court in *P.Seethamma and others v. P.Ramakrishna Reddy and others*².

On the other hand, learned Counsel for the respondents submitted that except interrogatory No.1, other prayers are not in the form of interrogatories. It is further submitted that the present application has been filed at a belated stage and as such the same is not maintainable. It is also submitted that the interrogatories which are now sought to be served, were already questioned to the 1st respondent in his cross-examination. Since the application is filed at the stage of arguments, the trial Court has rightly dismissed the petition and there is no illegality in the said order.

Before proceeding further, it would be useful to refer to Section 30 of C.P.C. which reads as under:

“Section 30. Power to order discovery and the like— Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

¹ (2012) 8 SCC 148

² (1997) 2 ALD 68

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit”

It is also relevant to refer Order XI Rule 1 and 2 of C.P.C., which reads as under:

Order XI Rule 1: Discovery by interrogatories.-

In any Suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an Order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the Suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness.

Rule-2 Particular interrogatories to be submitted:

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court 1 [and that Court shall decide within seven days from the day of filing of the said application]. In deciding upon such application, the Court shall take into

account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs."

In *P.Seethamma and others v. P.Ramakrishna Reddy and others* (2 supra), this Court held as under:

"4. A reading of Section 30 C.P.C. shows that the Court has got power to order discovery or permit interrogatories at any time. Order 11 Rule 1 C.P.C. contemplates service of interrogatories on the opposite party with the leave of the Court. A conjoint reading of these two provisions make it clear that the Court can at any stage allow service of interrogatories in its discretion. But, at the same time, the discretion must be exercised in a judicious way. The information sought to be furnished must have some nexus or relevancy with the dispute in question.

5. It is needless to say that under the guise of these powers, it cannot be permitted to have a roving or fishing enquiry in respect of matters which are not relevant for the purpose of the suit. It is also pertinent to note that all questions which are relevant for cross-examining the witness may not be also relevant for the purpose of interrogatories."

In the instant case, according to the petitioner, the subject property was actually purchased by the petitioner and the 1st respondent from the 2nd respondent for Rs.1,42,00,000/-. Out of the said amount, the petitioner has paid Rs.83,11,000/- on different occasions and the petitioner is permitted to live in the subject

property. The relief sought in O.P. itself is to declare that the petitioner is having right and title over half of the subject property. Hence, the nature of the property in dispute is one of the issues for consideration before the trial Court. Therefore, in my considered opinion, the service of interrogatories on the 1st respondent cannot be said to be irrelevant or unconnected with the matter in question. In view of the law laid down by this Court in *P.Seethamma and others v. P.Ramakrishna Reddy and others (2 supra)* that the Court can at any stage, allow service of interrogatories and having regard to the facts and circumstances of the case, I am of the view that the trial Court has erred in dismissing the said application without considering the relevant aspect of the matter and failed to take into consideration the relevant provisions of law while disposing of the matter. Therefore, the order impugned is liable to be set aside.

Accordingly, the Civil Revision Petition is allowed and the order dated 12.09.2019, passed in I.A.No.1385 of 2019 in O.P.No.786 of 2014 on the file of the Principal Judge, Family Court-cum-Additional Chief Judge at Hyderabad, is hereby set aside.

Miscellaneous petitions, if any, pending shall stand closed.
There shall be no order as to costs.

JUSTICE G.SRI DEVI

31.12.2019
Gsn/gkv

