

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5525 of 2015

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.15.09.2015 in I.a.No.175 of 2015 in O.S.No.42 of 2014 of the Senior Civil Judge, Shadnagar.

2. Petitioners herein are defendants No.7 to 13 in the above suit.

3. Respondents 1 to 4 filed the said suit for partition and separate possession of the plaint A & B schedule properties on the basis of an Occupancy Right Certificate(ORC) issued by the Competent Authority to respondents 5 to 8.

4. Defendants 5 & 6 are the purchasers of the property from defendants 1 to 4/respondents 5 to 8.

5. Petitioners herein also claim to be entitled to the ORC along with defendants 1 to 4 and had gotten impleaded in the suit as defendants 7 to 13.

6. It appears that petitioners filed I.A.No.3 of 2013 to receive certain documents including the order of the Joint Collector, Mahabubnagar passed in the Appeal filed by them under Section 24 of A.P. (Telangana Area) Abolition of Inams

Act, 1955 setting aside the ORC granted to respondents 5 to 8 and remanding the matter back to the Competent Authority, and the said application was allowed by the said Court. However, it appears that during the evidence adduced by 1st petitioner/DW-3, by oversight these proceedings could not be marked by the counsel, but mentioned in the chief-examination affidavit of DW-3.

7. Therefore, I.A.No.175 of 2015 was filed by the petitioners to recall DW-3 for marking these documents.

8. In the affidavit filed in support of this application, the fact that the counsel did not mark these documents by oversight was mentioned and it was also pointed out that these documents are important and necessary to answer the issues involved in the suit.

9. Respondents 9 and 10/defendants 5 & 6 opposed this application stating that there were no bonafides and it is an attempt to fill up the gaps in the evidence and is impermissible.

10. By order dt.15.09.2015, the Court below dismissed the said application. It observed that the parties to the suit at the time of filing of the evidence affidavit in lieu of chief examination under Order XVIII Rule 4 CPC should mention

the documents to be marked by giving serial numbers and description of the documents in the bottom of the affidavit, but the petitioners omitted to do so, and after completion of cross-examination of DW3, the present application has been filed and it has no merits.

11. Assailing the same, this Revision is filed.

12. Heard Sri E.Sambasiva Pratap, counsel for revision petitioners, Sri N.Vasudeva Reddy, Counsel appearing for respondents 1 to 4, and Sri M.V.Durga Prasad, Counsel appearing for respondents 9 & 10.

13. Counsel for the petitioners contended that once I.A.No.3 of 2013 was allowed and the petitioners were permitted to file the said documents, if permission is now denied to recall DW-3 for the purpose of marking these documents in the evidence of DW-3, grave prejudice would be caused to the petitioners.

14. Counsel for the respondents supported the order passed by the Court below.

15. I have noted the contentions of both sides.

16. There is no dispute that I.A.No.3 of 2013 had been allowed by the Court below to receive the documents in question on behalf of petitioners.

17. Merely because there was an oversight by the petitioners to mention about these documents in the chief-examination affidavit of DW-3, the Court below cannot refuse to recall DW3 for the limited purpose of marking these documents.

18. The documents in question appear to be relevant for consideration of the contentions of the parties and they need to be on record. Therefore, the impugned order cannot be sustained.

19. Accordingly, this Civil Revision Petition is allowed; order dt.15.09.2015 in I.A.No.175 of 2015 in O.S.No.42 of 2014 of the Senior Civil Judge, Shadnagar is set aside; and I.A.No.175 of 2015 is allowed. If DW-3 is recalled and the said documents are marked in his evidence, the plaintiffs as well as defendants 2 to 6 shall be given liberty to cross-examine DW-3 with regard to the said documents. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

14th March, 2019.

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