

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.R.P.Nos.2952, 2953 AND 2976 OF 2019

COMMON ORDER:

These three Civil Revision Petitions arise out of the orders passed in the Interlocutory Applications in the same Suit between the same parties and hence, they are being disposed of by this common order.

2. These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the revision petitioners/defendant Nos.2 and 5 aggrieved by the orders, dated 26.11.2019, passed in I.A.Nos.441, 442 and 439 of 2019 in O.S.No.26 of 2010 by the Senior Civil Judge, Narayanpet, wherein the Court below has dismissed the subject Interlocutory Applications, which were filed to reopen the evidence of defendants for filing the document i.e., certified copy of Form-C, dated 22.03.1983; to grant leave to file the said document and to recall DW.1 for the purpose of marking the said document.

3. Heard learned counsel for the revision petitioners/defendant Nos.2 and 5 and the learned counsel for respondent No.1/plaintiff and perused the record.

4. Learned counsel for the revision petitioners/defendant Nos.2 and 5 would submit that the subject document i.e., Form-C is necessary for determination of the subject Suit, which was filed for perpetual injunction. As per Form-C, part of the subject Suit land i.e., Ac.1-01 gunta in Survey No.218/A of Hindupur

Village, Maganoor Mandal, Mahabubnagar District, was acquired by the Government from the predecessors-in-title of respondent No.1/plaintiff and compensation was paid to the mother of respondent No.1/plaintiff. This has not been reflected in the pleadings and documents filed on behalf of respondent No.1/plaintiff. Even though Ac.1-01 gunta of land i.e., part of the subject Suit land, was acquired by the Government, claim is made in the subject Suit to the extent of Ac.8-14 guntas. Since the subject document was not in possession of the revision petitioners/defendant Nos.2 and 5, they have obtained copy of the same from the Revenue Divisional Officer concerned and immediately thereafter, filed the subject Interlocutory Applications to reopen the evidence of defendants, to grant leave to file copy of Form-C and also to get it marked through DW.1. However, the subject Interlocutory Applications were dismissed by the Court below, vide the impugned orders, without there being any justifiable cause. The subject Interlocutory Applications are not belatedly filed and ultimately, prayed to set aside the impugned orders and allow the subject Interlocutory Applications, as prayed for. In support of his submissions, learned counsel relied on the decision in *Lukka Srinivasa Rao @ Venkateswarlu v. Lukka Sivaiah*¹.

5. On the other hand, learned counsel for respondent No.1/plaintiff would contend that the subject Interlocutory Applications are filed belatedly. No justifiable cause or reason to

seek leave to file copy of Form-C is incorporated in the affidavits filed in support of the subject Interlocutory Applications. All the documents are required to be filed by the defendants along with the Written Statement, in terms of Order VIII Rule 1A (3) C.P.C. The subject document is not relevant for the purpose of determination of the subject Suit. Since no reasons are assigned explaining the delay caused in obtaining the copy of the subject document and filing of the same, the Court below is justified in dismissing the subject Interlocutory Applications and ultimately, prayed to dismiss the Civil Revision Petitions. In support of his submissions, learned counsel relied on the decisions in Voruganti Narayana Rao v. Bodla Rammurthy and others² and Union of India (UOI), Ministry of Finance v. Y. S. Hi-Tech Secure Print Pvt. Ltd.³.

6. In view of the submissions made by both the parties, the point that arises for determination is as follows:

“Whether leave can be granted to file copy of Form-C, dated 22.03.1983? Consequently, whether the two other applications to reopen and recall the evidence of DW.1 be allowed?”

7. The specific case of the revision petitioners/defendant Nos.2 and 5 is that an extent of Ac.1-01 gunta of land in Survey No.218/A situated at Hindupur Village, Maganoor Mandal, Mahabubnagar District, was acquired by the Government and

¹ 2016 (1) ALT 36

² 2011 (6) ALD 142

³ 2010 (6) ALD 430

compensation was paid to the mother of respondent No.1/plaintiff. Certified copy of Form-C obtained from the Revenue Divisional Officer concerned reflects payment of compensation to the mother of respondent No.1/plaintiff in respect of Ac.1-01 gunta of land in Survey No.218/A, which had been acquired. In the subject Suit, respondent No.1/plaintiff erroneously claimed injunction in respect of Ac.8-14 guntas of land in Survey No.218/A. A perusal of copy of Form-C, dated 22.03.1983, reveals the acquisition set-up by the revision petitioners/defendant Nos.2 and 5.

8. The specific case of respondent No.1/plaintiff is that there is no explanation for the delay that caused in filing Form-C, dated 22.03.1983. The averments in the affidavits filed in support of the subject Interlocutory Applications only reveal that an extent of Ac.1-01 gunta of land in Survey No.128/A was acquired by the Government and the Government paid compensation to the mother of respondent No.1/plaintiff and that there is collusion between the mother and daughter/respondent No.1/plaintiff and they created a fake sale deed and making attempts to illegally occupy the subject Suit land. In the written statement, there is no mention about Form-C document, dated 22.03.1983. It is only stated that the subject document is obtained from the Revenue Divisional Officer concerned and is filed along with I.A.No.442 of 2019.

9. In Lukka Srinivasa Rao @ Venkateswarlu's case (supra 1), relied on by the learned counsel for revision petitioners/defendant Nos.2 and 5, in paragraph Nos.7 and 8, it is held as follows:

"7. It is often said that procedure is the handmaid of justice. It is also said that procedural and technical hurdles shall not come in the way of the Court for doing substantial justice. Where procedural violations cause serious prejudice to the adversary party, the Courts need to view such violations seriously and uphold the objection(s) of the adversary party to prevent causing of such prejudice to it. In contrast, if such procedural violations do not lead to such result, the Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations.

8. Applying these settled legal principles to the present case, it is no doubt true that, as per the law that could be culled out from the precedents, the party who wants to produce the documents at a later stage of the suit proceedings, must satisfy the Court with convincing reasons that he was prevented by sufficient cause from producing the same earlier. However, in cases where such explanation is not effectively put forth and if the Court is convinced that the documents which are sought to be produced are essential for proper and effectual adjudication of the dispute and production of such documents at a belated stage would not prejudice the adversary party, it must overlook the failure of the party in putting forth convincing reasons."

10. In Voruganti Narayana Rao's case (supra 2) and Union of India (UOI), Ministry of Finance's case (supra 3), relied on by the learned counsel for respondent No.1/plaintiff, the

erstwhile High Court of Andhra Pradesh had observed that the mandate given in Order VIII Rule 1 C.P.C. is that the defendant has to file written statement of his defence within 30 days from the date of service of summons. Proviso to the said Rule envisages that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file written statement on such day as may be specified by the Court, for reasons to be recorded in writing, but shall not be later than 90 days from the date of service of summons. Rule 1A of Order VIII C.P.C. enjoins on the defendant to produce in the Court any document in his possession upon which he bases his defence or relies in support of his defence or claim for set off or counter-claim. Rule 1A (3) of Order VIII C.P.C., postulates that a document, which is ought to be produced in the Court by the defendant in the Suit, is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the Suit. Such document can only be received when it is essential for determination of the suit after proper explanation being given.

11. Admittedly, in the instant case, there are no convincing reasons. Only an averment is made that copy of the subject document i.e., Form-C was obtained from the Revenue Divisional Officer concerned and it is filed before the Court. The recitals of the subject document reveals that an extent of Ac.1-01 gunta of land in Survey No.128/A situated at Hindupur Village, Maganoor Mandal, Mahabubnagar District, was acquired by the

Government and compensation of Rs.3,939/- was paid to the mother of respondent No.1/plaintiff. Certainly, the said document has substantial bearing over the determination of the subject Suit, which is filed for perpetual injunction. Merely because details of obtaining certified copy etc., are not given, the request of the revision petitioners/defendant Nos.2 and 5 to grant leave cannot be defeated. Moreover, the document was not in possession of the revision petitioners/defendant Nos.2 and 5 and it also appears that the same was not within the knowledge of the revision petitioners/defendant Nos.2 and 5. Having come to know about the same at a later point of time, the revision petitioners/defendant Nos.2 and 5 have taken steps to obtain the certified copy of the subject document and moved the subject Interlocutory Applications. Under these circumstances, the Court below ought to have granted leave to file the subject document. The impugned orders, dated 26.11.2019, are not legally sustainable and they are liable to be set aside.

12. Accordingly, the Civil Revision Petitions are allowed setting aside the impugned orders, dated 26.11.2019, passed in I.A.Nos.441, 442 and 439 of 2019 in O.S.No.26 of 2010 by the Senior Civil Judge, Narayanpet. Consequently, I.A.Nos.441, 442 and 439 of 2019 are allowed. The Court below shall dispose of the subject Suit uninfluenced by any of the observations made in this order.

Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

December 31, 2019.
MD

