

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

C.R.P.Nos.7583, 7584 & 7585 of 2018

COMMON ORDER:

These three Revision Petitions arise between the same parties out of the same suit. Therefore, they are being disposed of by this common order.

2. Petitioners in these three Revision Petitions are plaintiffs in O.S.No.70 of 2012 on the file of V Additional District Judge, Karimnagar.

3. They filed the said suit for declaration of title and for mandatory injunction directing the respondents to remove structure over the suit schedule property and handover the same to the petitioners, and also for declaration that certain documents are not binding on them. In the plaint, petitioners specifically contended that their father is Sri Ratnaiah, S/o. Ramaswamy.

4. Written Statement was filed by respondents taking a plea that respondents are not aware whether petitioners are the only legal heirs and successors of Sri Ratnaiah, S/o. Ramaswamy, and the petitioners are put to strict proof of the same. It was also contended that it is incorrect to contend that father of the petitioners was the owner and possessor of the subject property.

5. Affidavit in lieu of Chief examination of P.W.1 was filed on 22-01-2016 and documents on behalf of P.W.1 were marked on the

same day. Cross examination by the respondents is deferred to 06-04-2016. On that day, though the witness was available for cross examination, there was no representation on behalf of the respondents, and so the evidence of P.W.1 was closed.

6. Respondents then filed I.A.No.329 of 2016 to recall P.W.1 for the purpose of cross examination stating that failure to cross examine P.W.1 on 06-04-2016 was not willful. The said application was allowed on 15-02-2018 and the respondents were allowed to cross examine P.W.1 in which certain suggestions were made that Rathnaiah, son of Ramaswamy, who the petitioner's claim to be their father, was not their father.

7. Though P.W.1 denied the said suggestion, thereafter, a memo was filed on 04-04-2018 by the petitioners stating that in view of the recalling of P.W.1 for further cross examination and suggestions being given in the further cross examination by respondents to P.W.1 that the father of the petitioners was different from the original owner Rathnaiah, and as P.W.1 was earlier not cross examined by the respondents, the petitioners had not produce documents about their succession to the property as legal heirs of Rathnaiah, and that they reserve their rights to rebut the evidence adduced by the respondents, whose evidence in the meantime been completed under Order 18 Rule 3 CPC.

8. Thereafter, petitioners filed I.A.No.372 of 2018 to reopen the case, I.A.No.373 of 2018 to recall P.W.1 and I.A.No.374 of 2018 to receive certain documents to prove their succession to the property from the original owner.

9. These applications were opposed by the respondents.

10. The Court below held that since the petitioners failed to file these documents at the earliest point of time, they cannot be permitted to file them at the stage of arguments by reopening the case and recalling P.W.1 and permitting filing of new documents to fill up the lacuna in their evidence. The Court also observed that the burden of proving their case lay heavily on the shoulders of the petitioners, and they were bound to produce/file entire evidence in their possession at the earliest point of time, and they cannot take defence that delay in filing these petitions occurred only due to the respondents' actions. It also further observed that the applications are filed only to drag on the matter and the documents sought to be marked are very much available to the petitioners, but they did not file it. Accordingly, dismissed all the applications.

11. Challenging the same, these Three Revision Petitions are filed.

12. Heard Sri K.S.Murthy, learned counsel for the petitioner and Sri V.Ravikiran Rao, learned counsel for the respondents.

13. Learned counsel for the petitioners contended that the orders passed by the Court below are erroneous and have to be set aside. According to him, since the evidence of P.W.1 was closed on 06-04-2016 because cross examination was not done by the respondents on 06-04-2016, at that point of time, there was no necessity for the petitioners to file the documents relating to their succession to the property since no doubt about it was raised by the respondents during cross examination. But when I.A.No.329 of 2016 was filed by the respondents to recall P.W.1 and thereafter he was subjected to cross examination again on the said aspect, petitioners cannot be denied the opportunity to mark documents to rebut the contentions of the respondents.

14. Sri V.Ravikiran Rao, learned counsel for the respondents, supported the order passed by the Court below.

15. It is no doubt true that initially P.W.1 was not cross examined by the learned counsel for the respondents and the evidence of P.W.1 was closed on 06-04-2016. In the absence of cross examination of P.W.1 on the aspect of succession to the property from the original owner, there could not have been any adjudication on the said aspect by the Court below merely because there was a plea raised in the Written Statement by the respondents putting the petitioners to strict proof that petitioners are successors of the original owner Ratnaiah. Thereafter, I.A.Nos.329 of 2016 was filed by the respondents to recall P.W.1 but by the time the said application was

ordered on 15-02-2018, the evidence on the part of the respondents had also been concluded. P.W.1 was also cross examined by the respondents on 20-02-2018 on the specific aspect of succession to the original owner Ratnaiah.

16. Once such an indulgence was shown to the respondents by the Court below by reopening the evidence of P.W.1 and recalling him for further cross examination at their instance, petitioners cannot be denied the opportunity to lead rebuttal evidence because the occasion to lead such evidence has arisen only by virtue of such fresh cross examination on 20-02-2018 by the respondents of P.W.1. If such cross examination had not been permitted, there would not have been any necessity to the petitioners to lead such evidence at all.

17. The question whether these documents sought to be marked were available with the petitioners much before the filing of these I.As would therefore be totally irrelevant, and cannot be a ground to deny the petitioners opportunity to lead rebuttal evidence for which they have been filed a memo on 04-04-2018.

18. I am therefore of the opinion that the orders passed by the Court below in I.A.Nos.372, 373 and 374 of 2018 in O.S.No.70 of 2012 are vitiated by error of jurisdiction conferred on it; and they are liable to be set aside; and they are accordingly set aside. The Civil Revision Petitions are accordingly allowed and the I.A.Nos.372, 373

and 374 of 2018 are allowed. The Court below is directed to expeditiously conclude the proceedings in the suit. No costs.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-01-2019
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