

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION Nos.855 AND 886 OF 2019

COMMON ORDER:

Since the parties and the subject suit in both these civil revision petitions are one and the same, they are being heard and disposed of together.

2. These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the petitioners/plaintiffs, aggrieved by the common order, dated 14.02.2019, passed in I.A.Nos.852 and 853 of 2018 in O.S.No.689 of 2013 by the learned X Additional Chief Judge, City Civil Court at Hyderabad, whereby, the subject Interlocutory Applications filed by the revision petitioners/plaintiffs to recall PW.1 and to receive declaration-cum-undertaking deed dated 08.06.2003, were dismissed by the Court below.

3. Heard the learned counsel for both sides and perused the record.

4. Learned counsel for the revision petitioners/plaintiffs would submit that the declaration-cum-undertaking deed dated 08.06.2003 was not within the knowledge of the revision petitioners and when they were searching their house, they found the said deed and immediately they filed the subject Interlocutory Applications to recall P.W.1 and to receive the said document by condoning the delay. As the said document was not within the knowledge of the revision petitioners, they are justified in filing the subject Interlocutory Applications. It is also submitted that the said document is relevant for the purpose of adjudication of the Original Suit which was filed for declaration of title and recovery of possession of the suit schedule

property. The Court below erroneously dismissed the subject Interlocutory Applications and ultimately prayed to set aside the impugned common order and allow the civil revision petitions as prayed for.

5. On the other hand, learned counsel for the respondents/defendants would contend that there is no whisper in the plaint with regard to the said document. If the said document was in possession of the petitioners/plaintiffs, they ought to have filed the same along with the plaint or atleast before commencement of trial. The said document is fabricated. It is pressed into service to make unlawful gain. The Court below has rightly dismissed the subject Interlocutory Applications and ultimately prayed to dismiss the revision petitions.

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

“Whether the impugned common order, dated 14.02.2019, passed in I.A.Nos.852 and 853 of 2018 in O.S.No.689 of 2013 by the learned X Additional Chief Judge, City Civil Court at Hyderabad, is liable to be set aside?”

7. POINT: The averments of the affidavits and the submissions made on behalf of the revision petitioners/plaintiffs would show that immediately after tracing out the subject document, the revision petitioners/plaintiffs have filed the subject Interlocutory Applications to recall P.W.1 and to receive the said document by condoning the delay. As the said document was not within the knowledge of the revision petitioners, they have not filed it along with the plaint and it was not

referred to in the plaint pleadings. However, there is specific mention in the plaint with regard to Ex.A2-Will. Respondent Nos.1 and 2 said to have knowledge with regard to the execution of Ex.A2-Will at the time of purchase of the said property. Even then, they have purchased the suit schedule property. The said document demonstrates the knowledge of the respondents with regard to Ex.A2-Will. Therefore, the said document is essential for determination of the issues that are framed in the subject suit. In the given circumstances, as the subject document is necessary for determination of the suit, the permission as sought for by the revision petitioners is required to be granted.

8. Learned counsel for the revision petitioners relied on the decision reported in *Mamidi Rajamani v. Panjala Prameela and others*¹, wherein this Court held that the document, which is just, necessary and essential for determination of the subject suit, was allowed to be filed belatedly. Under these circumstances, the impugned common order dated 14.02.2019 is liable to be set aside. The subject document, i.e., declaration-cum-undertaking deed, dated 08.06.2003 is necessary and essential for determination of the issues framed in the suit.

9. In the result, both the Civil Revision Petitions are allowed and the impugned common order dated 14.02.2019, passed in I.A.Nos.852 and 853 of 2018 in O.S.No.689 of 2013 by the learned X Additional Chief Judge, City Civil Court at Hyderabad, is set aside. Consequently, I.A.Nos.852 and 853 of 2018 stands allowed as prayed

¹ 2017(5) ALT 660

for. Permission is granted to the revision petitioners to file the declaration-cum-undertaking deed dated 05.06.2003. Further, P.W.1 is permitted to depose further to mark the said document. The observations made in these revision petitions shall not be taken into consideration to determine the *lis*.

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

Date: 12.02.2020
ssp

Dr. SHAMEEM AKTHER, J

