

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY
CIVIL REVISION PETITION Nos.3104 of 2022
and 3114 of 2022

COMMON ORDER:

The petitioners/respondents/defendants have filed these two civil revision petitions assailing the orders dated 07.11.2022 in I.A.Nos.153 of 2022 and 154 of 2022, both in A.S.No.90 of 2022 on the file of the learned I Additional District and Sessions Judge at Siddipet.

2. I.A.No.153 of 2022 was filed under Order 41, Rule 27 read with Section 151 of Civil Procedure Code (for short 'CPC') with a prayer to receive new pattadar passbook relating to the petitioner and old pattadar passbook relating to Rayagatla Vajravva along with pahanis dated 19.09.2014 and whereas, I.A.No.154 of 2022 was filed under Section 151 of CPC to re-open the petitioners' evidence for the purpose of marking the said documents. Learned Judge of the first appellate Court has dismissed both the applications through separate orders dated 07.11.2022. Assailing the orders passed in I.A.Nos.153 of 2022 and 154 of 2022 CRP Nos.3104 of 2022 and 3114 of

2022 respectively are filed along with interlocutory applications to stay the proceedings in AS No.90 of 2022 on the file of the I Additional District and Sessions Judge, Siddipet. Accordingly, it is proposed to dispose of both the civil revision petitions together through this common order.

3. Heard learned counsel for the revision petitioners and respondents. The submissions made on either side have received due consideration of this Court

4. For the sake of brevity and convenience, the parties hereinafter referred as appellant/plaintiff and respondents/defendants as arrayed in O.S.No.147 of 2014 and A.S.No.90 of 2022.

5. The plaintiff has filed Original Suit for perpetual injunction restraining the defendants from interfering with their possession in respect of suit schedule properties situated at Nanganoor Village and Mandal, Medak District. The trial Court, after full-length of trial, on appreciation of oral evidence of PWs.1 to 5, DWs.1 to 4 and the contents of Exs.A1 to A9 and Exs.B1 to B10, has dismissed the suit of the plaintiff holding that the plaintiff failed to satisfy the

Court that the defendants tried to interfere in the suit schedule property and the plaintiff is not entitled for perpetual injunction against the defendants in respect of suit schedule property.

6. Feeling aggrieved by the said judgment and decree dated 27.07.2022 in O.S.No.147 of 2014 the plaintiff has preferred appeal in A.S.No.90 of 2022 before the learned I Additional District and Sessions Judge, Siddipet.

7. During pendency of this appeal suit, the defendants have filed these two applications in I.A.Nos.153 of 2022 and 154 of 2022 for reception of additional documents and also for re-opening the appeal suit for marking the said documents. Learned Judge of the first appellate Court has dismissed both the applications holding that as per Order 41, Rule 27 of CPC, the appellate Court can only admit additional evidence when the trial Court has refused to admit or despite the exercise of due diligence such evidence was not within their knowledge. But, in the instant case from the contents of the

supporting affidavits, nothing is mentioned that the defendants exhibited due diligence during trial and they did not chose to mark these documents and as such, the pre-requisite conditions as specified under Order 41, Rule 27 of CPC were not complied with and both the applications were dismissed. Feeling aggrieved by the orders in I.A.Nos.153 and 154 of 2022 these two civil revision petitions are filed.

8. From the facts discussed in the preceding paragraphs it is evident that the plaintiff has filed suit for perpetual injunction in respect of suit schedule property and that suit was dismissed by the trial Court, thereafter the plaintiff has filed appeal in AS No.90 of 2022 before the learned I Additional District Judge, Siddipet. During enquiry in the appeal suit, the defendants have filed these two applications with a prayer for reception of additional material and for re-opening the suit for exhibiting the documents.

9. Under Order 41, Rule 27 of CPC production of additional evidence whether oral or documentary can only be permitted under three circumstances, they are :

(i) The trial Court had refused to admit the evidence though it ought to have admitted;

(ii) The evidence was not available to the party despite exercise of due diligence; and

(iii) The appellate Court requires the additional evidence so as to enable it to pronounce better judgment or for any other substantial cause of like nature.

(Devarapu Narasimha Rao v. Yerrabothula Peda Venkaiah¹)

10. Thus, the law is well settled that the basic principle requisite for admission of additional evidence is the existence of one or the other of the conditions as contemplated under Order 41, Rule 27 of CPC.

11. Therefore, an application for production of additional evidence cannot be allowed if the party was not diligent in filing such documents before the trial Court and the party cannot be allowed to fill up the lacunae or to patch up the weak parts and to fill up the omissions before

¹ (1998) 2 ALT 513 DB

the appellate Court. Section 107 of CPC enables an appellate Court to take additional evidence or requires such other evidence to be taken subject to such conditions and limitations as prescribed under Order 41, Rule 27 of CPC. Ordinarily the principle to be observed is that the appellate Court should not travel outside the record of the trial Court and cannot take evidence in appeal with exception under Section 107(d) to this general rule as such, the appellate Court is not bound to permit additional evidence and the parties are not entitled as of right to the admission of such evidence and the matter is entirely to the discretion of the Court which is of course to be exercised judicially and sparingly.

12. Reverting back to the facts of the case on hand, on a careful perusal of averments in the supporting affidavit filed in I.A.Nos.153 and 154 of 2022 nothing is mentioned as to whether the trial Court has refused to receive old pattadar passbook pertaining to Rayagatla Vajravva along with pahanies dated 19.09.2019 and new pattadar passbook or such evidence was not available to the petitioner despite due diligence except stating that the

said documents are very important to show the possession of the party, nothing is mentioned in the affidavit filed in support of the applications before the appellate Court.

13. Therefore, for all the reasons stated above in my considered opinion, the revision petitioners/defendants have failed to establish the basic principle requisite for admission of additional evidence in the appeal suit, and as such at this stage the defendants cannot be allowed to fill up the lacunae or to patch up the weak parts and to fill up the omissions in their case by producing additional documentary evidence. The learned Judge of the first appellate Court has rightly applied the settled principles of law and rejected the claim of the petitioners/defendant. I find no infirmity or irregularity in the order impugned, it does not warrant any interference by this Court.

14. In the result, both the civil revision petition Nos.3104 of 2022 and 3144 of 2022 are dismissed confirming the impugned orders dated 07.11.2022 in I.A.Nos.153 of 2022 and 154 of 2022 in A.S.No.90 of 2022,

on the file of the learned I Additional District and Sessions Judge, Siddipet.

However, in the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stand closed.

A.VENKATESWHARA REDDY, J

02-02-2023

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