

(2013) 11 AP CK 0054

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 2745, 2762 and 2823 of 2012

John Santiyago, Moses Bendict, Francis Santiyago and Mrs.
Esther Anthony

APPELLANT

Vs

Clement Dass, Jude Vemin Dass, Mrs. Jennifer Maria Dass
and Miss Daphini

RESPONDENT

Date of Decision : 04-11-2013

Acts Referred:

Citation : (2014) 2 ALD 184 : (2014) 3 ALT 83

Hon'ble Judges : M. Seetharama Murti, J

Bench : Single Bench

Advocate : Shafiuddin, for the Appellant; D. Jagadeshwar Rao, for the Respondent

Judgement

M. Seetharama Murti, J.—Three Civil Revision Petitions are directed against the common order of dismissal dated 16.03.2012 of the learned XI Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, made in I.A. Nos. 214, 215 and 216 of 2012 in O.S. No. 559 of 2006 filed by the petitioners/plaintiffs to reopen the evidence on the side of the plaintiffs; to recall PW 1 for the purpose of marking/exhibiting two documents viz., (i) Covering letter dated 11.04.2011 addressed to the first plaintiff by a Public Information Officer/DAG (Administration) and (ii) Form of application for service pension/Family Pension/Retirement Gratuity/Service Gratuity/Commutation submitted by Smt. Chaya Devi showing her as the wife of Sri S.S. Dass; and to receive the aforementioned two documents on file after according necessary leave and by condoning the delay in filing the said documents. The facts that are necessary for consideration and for arriving at just decision in these civil revision petitions, in brief, are as under:

(a) The petitioners/plaintiffs ("plaintiffs") filed the suit for partition and separate possession of the suit schedule property against the respondents/defendants ("defendants"). The case of the plaintiffs is that they are also the children of S.S.

Dass though they were born to him through Mrs. Chaya Devi; and that the said S.S. Dass also gave birth to all the defendants through one Anna F. However, the defendants denied the plaintiffs' relationship with their father S.S. Dass and had further contended that the mother of the plaintiffs, Mrs. Chaya Devi is not the wife of S.S. Dass. Thus, in the suit before the trial Court, the relationship of the plaintiffs' mother-Chaya Devi with S.S. Dass, who is the father of defendants, is in dispute.

(b) During the course of trial, both the parties adduced oral and documentary evidence. The plaintiffs in support of their requests made in the three applications would contend that they had obtained, by having had resort to the provisions under the Right to Information Act, one of the documents viz., Form of application for service pension/Family Pension/Retirement Gratuity/Service Gratuity/Commutation submitted by Smt. Chaya Devi showing her as the wife of Sri S.S. Dass, and that the said document was furnished to the 1st plaintiff by a designated Government Officer along with a covering letter dated 11.04.2011 and that these two documents which are now being sought to be filed were recently furnished in April, 2011 and that, therefore, they could not be filed earlier and the same are relevant, crucial and necessary for proving the relationship which the plaintiffs' pleaded and which was denied by the defendants. It is also submitted that the said documents would be helpful to the trial Court in arriving at a just and fair decision in the suit. On the other hand, the defendants having filed their counters in the three applications had reiterated their pleaded defence. The defendants would contend that the petitions are filed at a belated stage only to delay the proceedings and that the applications are liable to be dismissed being devoid of merit.

(c) By the impugned common orders, the trial Court had dismissed the three petitions filed by the plaintiffs solely on the ground of delay. The trial Court observed in the impugned orders that the plaintiffs had these two documents in their possession for the last eleven months prior to filing of the petitions and that the suit underwent 23 adjournments and that the plaintiffs cross examined D.Ws 1 and 2 on different dates and yet the plaintiffs did not assign any reasons for not filing the documents at the earliest opportunity. The trial Court had also held that the suit which was pending for the last six years cannot be reopened. Having been aggrieved of the said orders, the present civil revision petitions are filed by the unsuccessful plaintiffs.

2. I have heard the submissions of the learned counsel for both the sides.

3. The facts leading to the filing of the present revision petitions are already stated supra, in detail. In a suit for partition, the plaintiffs are claiming that the father of the defendants, S.S. Dass, is also their father and that they are the children of the said S.S. Dass through their mother Mrs. Chaya Devi. The said contention of the plaintiffs was denied in the defence of the defendants. Since the relationship of the plaintiffs' mother, Chaya Devi with S.S. Dass, the father of the defendants was in dispute and was in issue, the plaintiffs intended to file one

more document namely, the copy of the form of application for service pension/ Family Pension/Retirement Gratuity/Service Gratuity/Commutation submitted by Smt. Chaya Devi showing her as the wife of Sri S.S. Dass, to prove their contention. It is an admitted fact that the plaintiffs obtained this document having had resort to the provisions of the Right to Information Act and the said document was supplied to the plaintiffs along with a covering letter dated 11.4.2011 by the Officer concerned. In fact one of the two documents i.e., the letter dated 11.04.2011, was confronted to D.W. 1 in his cross examination and was already exhibited, as exhibit B16.

4. Therefore, the question that now remains for consideration is only in regard to one document, viz., the copy of the form of application for service pension/ Family Pension/Retirement Gratuity/Service Gratuity/Commutation submitted by Smt. Chaya Devi showing her as the wife of Sri S.S. Dass.

5(a) The learned counsel for the defendant would also contend that a set of revision pension papers in the own handwriting of Mrs. Chaya Devi, is already exhibited as exhibit P7 wherein she has shown herself as daughter of late Sastry and that there is no reference to the present document in the pleadings of the plaintiffs and hence the document cannot be received at this belated stage and that there are no valid and sufficient reasons assigned by the plaintiffs in support of their requests in the applications.

5(b) The learned counsel for the plaintiffs in reply would argue that the present document was supplied by a competent Information Officer and that the same was obtained after having recourse to the provisions under the Right to Information Act and that the covering letter addressed by the said officer while furnishing the subject document was already exhibited and that the present subject document is one more important and relevant piece of evidence to prove the case of the plaintiffs and that if the said document is also permitted to be filed no prejudice would be caused to the defendants and that on the other hand the said document would be helpful to the trial Court to arrive at a just decision on one of the principal issues involved in the matter. It is explained that though the document was obtained in April, 2011, the same could not be filed into Court as by then the cross examination of D.W. 1 was in progress and that in fact both the documents were confronted to D.W. 1 in his cross examination, but, he had only admitted exhibit B16, the covering letter, and that the further cross examination of D.W. 1 was also continued on 18.08.2011 and that as the evidence of the defendants was in progress the learned counsel for the plaintiffs thought it fit to file the instant three applications at an appropriate time after the conclusion of the evidence on the side of the defendants and hence the delay cannot be said to be deliberate or intentional and there are no malafide intentions in filing the documents with delay and that if the delay is not condoned and the crucial document is not received on file, the plaintiffs would be put to serious loss. He would further contend that the relationship was pleaded and was denied, and therefore, the said aspect was already in issue and there was also

the required pleading and defence on record; and that under the settled law in regard to "pleadings" the evidence to be adduced need not be pleaded.

5(c) Coming to the first aspect, the present document is part of the record of a public institution and its contents were not known to the plaintiffs till a copy of the same was furnished to the plaintiffs and that, therefore, the plaintiffs could not be found fault for not pleading about the same is a contention having acceptable merit. It is also the submission that the documents, which are broadly referred to as suit documents, the existence of which ought to be pleaded in the pleadings, be only referred to in the pleadings and not the other documentary evidence. Further, when the required material propositions of facts are affirmed in the pleadings by one party and are denied by the other and an issue arose for determination on merits after full trial, the mere absence of a plea with a specific reference to a document is not fatal to the case of the plaintiffs as rightly urged on their behalf. In the light of the above submissions on behalf of the plaintiffs, which are having acceptable merit and in view of the facts peculiar to the present case, the ratio in the decision in the case of *Bolla Ajay Babu v. Nalla Manikyamma* 2010 (1) ALD 163 wherein this Court refused to accord leave to file the documents on the ground that there is no reference to the documents in the pleadings is not helpful to the respondents herein.

Notably, Rule 2(1) of Order VI of the CPC reads as under: Pleading to state material facts and not evidence:- (1) Every pleading shall contain, and contain only, a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

It is also relevant to note that "Evidence" means and includes- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

5(d) I have given detailed, thoughtful and earnest consideration to the other submissions, the facts and the relevant proposition of law. The matter is still before the trial Court; and since the plaintiffs are required to prove the pleaded relationship, which was denied by the defendants, and as according to the plaintiffs the present document is a crucial and relevant document said to be containing a recital in regard to the disputed relationship and as according to the plaintiffs the said document is not a self serving document, in the well considered view of this Court, an opportunity to file such a document cannot be denied to the plaintiffs merely on the ground of delay. Be it noted that the law is well settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the instant case, neither the explanation for the delay can be termed as casual nor can the delay be termed as deliberate, in the facts and circumstances of the case. There are no circumstances to hold that the delay was deliberate and was

on account of culpable negligence and malafides on the part of the plaintiffs. The action of the learned counsel in filing the documents furnished to him by the plaintiffs after the completion of the evidence of the defendants cannot be termed malafide and for the said act of the counsel, the plaintiffs cannot be penalized. The provision of law under Order VII Rule 14(3) of the Code confers discretionary power on the Court to grant leave and receive documents at the hearing of the suit. Reliance is placed by the learned Counsel for the revision petitioners on the judgment of a learned single judge of this Court in Bada Bodaiah and Another Vs. Bada Lingaswamy and Others, A question as to the interpretation of the provisions of Order VII Rule 14(3) of CPC directly fell for consideration in said case. After setting out the back ground of the case and the legislative history of Order VII Rule 14(3) in detail, the learned judge held as under:

A reading of Rule 1 of Order XIII alone would show that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written statement. The Court has no power to receive the documents produced subsequently. Further, Sub-rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit Order XIII Rule 1 and Order VII Rule 14(3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage. Non-mentioning of the documents sought to be produced at the subsequent stage is a curable defect With leave of Court, which is condition precedent under Sub-rule (3) of Rule 4 of Order VII read with Sub-rule (1) of Order 13 to receive the documents, documents can be produced at the time of trial. But Order VII Rule 14(3) being an exception to the rule in Order VII Rule 14(1) as well as Order XII Rule 1(1) (2), the power to grant must be exercised in rare cases and not in a routine manner.

It is well settled principle that in case "sufficient cause" is shown for filing the documents at the hearing of the suit and/or at the end of the trial, such cause shown should receive a liberal construction so as to advance the cause of substantial justice, more particularly when the documents sought to be filed, in the opinion of the Court, are relevant and may have bearing on the aspects to be taken into consideration for the determination of the real controversy and the principal issue/s involved in the matter/suit. And what constitutes a sufficient cause always depends up on the facts and circumstances of a particular case. Hence, the applications need not be rejected merely on the ground of delay/long

delay, but the test shall be whether sufficient cause is made out for the delay. If the plaintiffs herein are given an opportunity to recall P.W. 1 and to exhibit the afore mentioned document, now being sought to be filed, the entire oral and documentary evidence would be before the trial Court and the same may be helpful to the trial Court to arrive at a just decision in the matter. In the facts and circumstances of the case the requests of the plaintiffs merit consideration. Viewed thus, this Court finds that the impugned orders are liable to be set aside. This Court, therefore, holds that the plaintiffs had made out valid and sufficient grounds to accord leave to file the document/s, to recall P.W. 1 and for reopening the evidence for the above said purposes.

In the result, all the three Civil Revision Petitions are allowed and the impugned common order of the trial Court is set aside. Consequently I.A. Nos. 214, 215 and 216 of 2012 in O.S. No. 559 of 2006 stand allowed. Since the first document, namely, covering letter is already exhibited, the orders are confined to the second document, viz., Form of application for service pension/Family Pension/Retirement Gratuity/Service Gratuity/Commutation submitted by Smt. Chaya Devi showing her as the wife of Sri S.S. Dass. It is made clear that the said document is received on file, subject to proof, admissibility and relevancy. There shall be no order as to costs. Any miscellaneous petitions pending in these Civil Revision Petitions shall stand closed.