
(2003) 11 AP CK 0103
In the Andhra Pradesh High Court
Case No : CRP No. 3837 of 2003

P. Raghu and Others

APPELLANT

Vs

K. Anjaiah

RESPONDENT

Date of Decision : 27-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 8 Rule 1A, 115
Constitution of India, 1950 — Article 227

Citation : (2004) 1 ALD 366

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Raja Malla Reddy, for the Appellant; K. Govind, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri M. Rajamalla Reddy, learned Counsel representing the petitioners-defendants and Sri K.Govind, learned Counsel representing the respondent-plaintiff.

2. This Civil Revision Petition is preferred by the petitioners aggrieved by an order made in LA. No. 143 of 2003 in O.S. No. 63 of 2000 on the file of Junior Civil Judge, Siddipet. The revision petitioners filed the said application under Order 13 Rules 1 and 2 of the CPC (for brevity, "the Code") to receive the documents. The documents produced are the Municipal permission and plan dated 19-12-1978, certificate of ownership, dated 21-3-2003 and house tax payment receipts (ten in number) from 1991 to 2002. The learned Junior Civil Judge at paras 7 and 8 had recorded the reasons and ultimately had dismissed the said application. Aggrieved by the same, the present Civil Revision Petition is filed.

3. Sri M. Rajamalla Reddy, the learned Counsel representing the petitioners-defendants would contend that these are all documents issued by the Municipality, a local body and in fact these documents are public documents within the meaning of Section 74 of the Indian Evidence Act, 1872. The learned Counsel also submitted that it is no doubt true that after closure of evidence on

the side of the plaintiff before the commencement of evidence on defendants" side, the present application was filed to receive the documents in question. The mere fact that the documents were not specified in the written statement by itself may not be a ground. The learned Counsel also had taken this Court through the reasons explained in the affidavit filed in support of the application and had submitted that in the facts and circumstances of the case, the learned Judge should have permitted the petitioners to rely on these documents which are having material bearing on the questions in controversy between the parties. The learned Counsel also had placed reliance on V. Ramesh and Others Vs. Government of Andhra Pradesh and Others, and also in Gullipalli Naram Naidu Vs. Kinthali Kumaraswami, .

4. Per contra, Sri K. Govind, the learned Counsel representing the respondent-plaintiff had taken this Court through the provisions of the Code, Order 13 Rules 1 and 2 of the Code as they stood prior to the Amending Act and subsequent thereto and also had explained the object of deletion of Order 13 Rule 2 of the Code and further explained Order 8 Rule 1(A) of the Code in this regard. The Counsel also had drawn the attention of this Court to Section 32(P) of Act (46 of 1999) and also Section 23 of the said Act and had submitted that in the light of these provisions especially in view of the fact that these documents were not referred to in the written statement and they were produced at a belated stage before the commencement of the evidence on the defendants" side, the learned Judge is well justified in dismissing the said application. The learned Counsel also maintained that these documents are not public documents and even otherwise, no good cause or sufficient cause had been shown and on that ground when an application for reception of documents was dismissed by the learned Judge, such order may not fall within the meaning of material irregularity in exercise of jurisdiction and hence, the revision itself is not maintainable. The learned Counsel had placed strong reliance on Madanlal Vs. Shyamlal, , and also in Palakurthy Venkateswarlu Vs. Noroju Manorama @ Satya Manorama and Others, .

5. Heard both the learned Counsel.

6. The petitioners filed LA. No. 143 of 2003 in O.S. No. 63 of 2000 on the file of Junior Civil Judge, Siddipet for reception of documents i.e., Municipal Permission and Plan dated 19-12-1978, Certificate of Ownership dated 21-3-2003 and house tax receipts from 1991 to 2002 (10 in number) under Order 13 Rules 1 and 2 of the Code read with Section 151 of the Code. It is stated in the affidavit that while searching in the office in the first week, they found the sanctioned Municipal permission and plan dated 19-12-1978, obtained by their father and the plan and permission are very useful and material in deciding the matter, there are also dimensions. It was further pleaded that the defendants filed the written statement stating that the premises with Door No. 8-3-109 belongs to them and they had obtained certificates showing the ownership of their father Jagannatham over the said house from the Town Municipality, Siddipet. It was further pleaded that they have been paying house tax to the Municipality in

respect of the said house and house tax receipts and certificates of Municipality, permission and plan are very relevant and material for the purpose of proving their case and hence, they prayed for the relief of reception of the said documents.

7. The respondent-plaintiff filed a counter stating that the suit was filed on 5-6-2000 and earlier there was an interim injunction, which was disposed of and thereafter, the petitioners-defendants filed Civil Miscellaneous Appeal which was also dismissed and the respondent-plaintiff had examined four witnesses and his evidence was closed and till then the documents were not filed and even, in the written statement, the petitioners never disclosed that they are having any documents, much less, the documents now pressed into service. Hence, prayed for dismissal of the said application.

8. The learned Judge had recorded the same reasons and on the ground of non-mentioning of these documents in the written statement and on the ground of delay, the learned Judge arrived at a conclusion that these documents cannot be received at the belated stage and ultimately dismissed the said application. Aggrieved by the same, the present Civil Revision Petition is preferred.

9. It is no doubt true that this application was filed by the revision petitioners under Order 13 Rules 1 and 2 of the Code read with Section 151 of the Code. Section 23 of the CPC (Amendment) Act, 1999 (46 of 1999) reads as follows :

"Amendment of Order XIII :--In the First Schedule, in Order XIII, for Rules 1 and 2, the following rule shall be substituted, namely;

"1. Original documents to be produced at or before the settlement of issues:

(1) The parties or their pleader shall produce on or before the settlement of Issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in Sub-rule (1) shall apply to documents--

(a) Produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory."

10. Section 32 of the said Amending Act deals with repeal and savings. Section 32(p) reads as hereunder:

"the provisions of Rules 1 and 2 of Order XIII of the First Schedule, as substituted by Section 23 of this Act, shall not affect the documents produced by the parties or ordered by the Court to be produced before the commencement of Section 23 of this Act;"

11. Thus, Order 13 Rule 2 of the Code was completely deleted and the amended provision came in to force from 1-7-2002. It is needless to say that in the present case, the defendants filed the application for reception of these documents prior to the commencement of evidence on their side. Order 8 Rule 1 (A) of the Code dealing with the duty of the defendant to produce the documents upon which relief is claimed or relied upon by him also was introduced by virtue of Section 18 of the Act (46 of 1999) and the said provision reads as hereunder:

"Amendment of Order VIII:- In the First Schedule, in Order VIII--

(i) for Rule 1, the following rule shall be substituted, namely:--

"1. Written statement:--The defendant shall at or before the first hearing or within such time as the Court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence."

(ii) after Rule 1 so inserted, the following rule shall be inserted, namely:--

"1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him:--(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the written statement under this rule, it shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.

(4) Nothing in this rule shall apply to documents--

(a) produced for the cross-examination of the plaintiffs witnesses, or

(b) handed over to a witness merely to refresh his memory."

(iii) Rules 8-A, 9 and 10 shall be omitted."

12. Sub-rule (3) of Rule 1-A of Order VIII as introduced by Act 22 of 2002 reads as hereunder:

"A document which ought to be produced in Court by the defendant under this rule, but, 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."

13. It is pertinent to note that a document which ought to be produced in Court by the defendant under this Rule, as per Sub-section (3) is not so produced,

cannot be received in evidence except with the leave of the Court. The said procedure was not followed by the petitioners-defendants in the present case. Section 74 of the Indian Evidence Act, 1872 deals with the public documents and Section 74(1) refers to documents of public bodies and Tribunals and Sub-section (2) of Section 74 refers to public documents. No doubt, there is some controversy between the parties, whether these documents relating to the local bodies fall within the meaning of public documents or not. Normally, while considering an application for reception of documents, the Courts receive the documents subject to proof and relevancy and the Courts also permit the other objections to be raised at the time of marking. It is no doubt true that in certain cases, the admissibility or relevancy of these documents would be decided even while deciding whether the documents are to be received at all on an application filed at a stage later than the stage fixed by the provisions of the Code. Order 41 Rule 27 of the Code deals with certain conditions on which additional evidence also can be permitted and received at the appellate stage. In Gullipali Naram Naidu's case (supra), this Court while dealing with the effect of deletion of Order 13 Rule 2 of the Code and also Order 18 Rule 17 of the Code and the effect of the amended provisions had observed at para-17 as hereunder:

"It may be reiterated that out of three conditions enjoined under Rule 27(1) of Order XLI CPC, the first two conditions pertain to non-production of the documents on account of the fact that either such evidence was refused by the Trial Court or such evidence was not within the knowledge of the plaintiff or the defendant, as the case may be, despite exercise of due diligence during the pendency of the suit. Even if the two requirements are not satisfied, the appellate Court, notwithstanding the same, as its requirement, can receive the documents. While that be the position, so as to prevent such a contingency, why not the Trial Court permit the parties to produce such a document if it is convinced that such a document is required for an effective adjudication of the suit, without driving the parties to resort to the provisions of Rule 27 of Order XLI CPC and relieve the appellate Court of the task of getting such documents as a requirement of the Court. Even otherwise, the inherent powers of the Court u/s 151 CPC have been saved, and nothing prevents the Court from receiving the documents in exercise of its inherent power, in the absence of any express prohibition to that effect in the CPC."

14. A view was expressed that even otherwise the inherent powers of the Court u/s 151 of the Code have been saved, and nothing prevents the Court from receiving the documents in exercise of its inherent powers in the absence of any express prohibition to that effect in the Code. Though a broad proposition has been laid down in this regard, it cannot be said that the parties can be permitted to come up with an application for reception of documents at a belated stage without following the procedure and formalities specified under the amended provisions of the Code. If that is not done, I am afraid that the very object and purpose of introducing the amending provisions to the Code would be defeated. In Bila Jagan Mohan Reddy's case (supra), the Apex Court while dealing with

Order 13 Rule 1(2) of the Code, Order 41 Rule 27 of the Code and u/s 5 of the Limitation Act, 1963 observed as hereunder:

"It is clear from its bare reading that the parties or their Counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The Court is enjoined under Sub-rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed u/s 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they have obtained certified copies from the revenue authorities and sought to be produced. It is undoubted that there is a delay in production of the said documents. But the Trial Court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the Court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate Court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the Trial Court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect may have, be considered in deciding the issues arose in the controversy. Under these circumstances, the Trial Court was not justified in refusing to condone the delay and to receive the documents. The High Court also committed the same error in not considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned." The Trial Court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law."

15. Strong reliance was placed in Palakurthy Venkateswarlu's case (supra), wherein the Apex Court held as hereunder:

"Recently, the Supreme Court in Madanlal Vs. Shyamlal, } while holding that "good cause" in Rule 2 of Order 13 CPC requires a lower degree of proof as compared to "sufficient cause", held that the said rule cannot be construed liberally, and the High Court, in a revision, cannot interfere with an erroneous order dismissing an application under Order 13 Rule 2 CPC unless it is shown that the Trial Court had acted with material irregularity in exercise of its jurisdiction and that order would result in failure of justice. In that case in a suit for specific performance, defendant wanted to produce certain documents at a belated stage under Rule 2 of Order 13 CPC with a plea that those documents

were misplaced by a person to whom they were entrusted, but the affidavit of that person who allegedly misplaced those documents was not filed. There was no reference to those documents in the written statement also. The Trial Court dismissed the said petition and that order was confirmed by the High Court. On appeal to Supreme Court, the Supreme Court held that, the High Court rightly affirmed the dismissal of the application filed by the defendants."

16. Strong reliance was also placed on that and inasmuch as the reasons in detail had been recorded by the learned Judge. The impugned order cannot be disturbed in the present revision under Article 227 of the Constitution of India, placing reliance on Madanlal's case (supra), it is no doubt true that the Apex Court had observed that when the documents were not produced at an appropriate stage, such documents not to be received by the Court unless good cause is shown. The Apex Court also in that context, no doubt, had dealt with what is the meaning of the expression "material irregularity" in exercise of jurisdiction in the context of Section 115 of the Code. It is needless to say that by virtue of the Amending Acts, Section 115 of the Code also had been amended and the present Civil Revision Petition is filed under the Article 227 of the Constitution of India. It is needless to say that this remedy is a constitutional remedy, falling under the concept of basic structure which cannot be disturbed in any way. It is also pertinent to note that the other limitations and the technicalities which were hitherto available in the case of revisions filed as against the interlocutory orders u/s 115 of the Code may not be applicable in these revisions filed under Article 227 of the Constitution of India. It is no doubt true that expressing such a view may amount to virtually enlarging the revisional powers under Article 227 of the Constitution of India as against the interlocutory orders made by the Subordinate Courts, but, law in this regard is clear and as far as the power of superintendence and the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is concerned, always in appropriate cases, suitable directions can be issued. At the same time, the object of introducing the amendments to the Code by Amending Acts also cannot be lost sight. Strong reliance was placed on *Surya Dev Rai Vs. Ram Chander Rai and Others*, .

17. In the light of the foregoing discussion and inasmuch as the petitioners had not moved appropriate applications for reception of documents, an application praying for leave of the Court to receive the documents and an application for reception of documents, the application filed by the petitioners in its form as such, in my opinion, is not maintainable especially, in the light of the specific provision Order 8 Rule I-A(iii) of the Code. Hence, in the interest of justice, while exercising the powers under Article 227 of the Constitution of India, I am well satisfied that it is a fit matter where the petitioners are to be given liberty to move appropriate applications for reception of the documents in question. Accordingly, the petitioners are given liberty to move appropriate applications for reception of the documents in question.

18. The civil revision petition is accordingly disposed of with the above direction.
No costs.