

Al Haj Mohammed Rafiuddin Vs Md. Hasan Miya Died Per Lrs And 15 Others

Court: High Court For The State Of Telangana:: At Hyderabad

Date of Decision: Jan. 11, 2023

Acts Referred: Code Of Civil Procedure, 1908 " Section 151, Order 8 Rule 1A, Order 8A Rule 2(a), Order 6 Rule 15, Order 18 Rule 17, Order 18 Rule 17(A)

Civil Rules of Practice and Circular Orders, 1980 Rule 2(j), 2(m), 9(1), 9(3), 26(2), 40, 46, 53, 54

Hon'ble Judges: P.Sree Sudha, J

Bench: Single Bench

Advocate: K Devender

Final Decision: Allowed

Judgement

1. These Civil Revision Petitions are filed against the Common Order of the trial Court in I.A.Nos.51, 52 & 53 of 2022 in O.S.No.19 of 2011 dated

27.09.2022.

2. Defendants in the suit filed I.A.Nos.51, 52 & 53 of 2022 before the trial Court, as they are interconnected with each other all of them are disposed

of by a Common Order dated 27.09.2022. I.A.No.51 of 2018 was filed to recall and examine D.W.2 for further evidence and for marking certain

documents. I.A.52 of 2018 was filed to re-open the suit in O.S.No.19 of 2011 for adducing further evidence. I.A.No.53 of 2018 was filed seeking

leave to produce certified copy of a registered sale deed No.2030 of 1985 dated 22.05.1985 and certified copy of the sale deed vide Doc.No.981 of

1989 dated 13.08.1989. The trial Court considering the arguments of both sides allowed the applications. Aggrieved by the said order, these revision

petitions are preferred.

3. The learned Counsel for the petitioners mainly contended that the trial Court allowed said applications mechanically without specifying any reasons.

The trial Court ought to have rejected I.A.No.52 & 51 of 2022 as they were not filed in conformity with Order VI rule 15 of C.P.C r/w rule 2(j), rule

2(m), rule 9(1), rule 9(3), rule 26(2), rule 40, rule 46 and rule 53 of Civil Rules of Practice and Circular Orders, 1980 and I.A.No.53 of 2022 was not

filed under Order 8 rule (1-A) of C.P.C r/w rule 54 of Civil Rules of Practice and Circular Orders, 1980. He further stated that applications were filed

after 10 years from the date of filing the suit when the suit was posted for arguments. He also relied upon a decision of the Hon'ble Supreme

Court in the case of K.K. Velusamy Vs. N. Palanisamy 2011 (11) SCC 275 and in the case of Bagai Constructions Vs. Gupta Building Material Store

2013 (14) SCC 1 and also relied upon the reported Judgment of this Court in 2016 (3) ALD 658 and 2014 (1) ALD 240 and submitted that allowing all

the above applications is illegal as per the above citations. He further stated that Order 18 rule 17(A) C.P.C was deleted from 01.07.2002 to avoid

misuse of the said provision. I.A.No.51 & 52 of 2022 was filed vide CFR No.531 & 532 respectively on 11.06.2018 and the same were returned by

office with certain objections to submit the same within 7 days, but they were resubmitted on 05.02.2022 i.e, after 2 years 10 months without filing

condonation petition or without leave of the Court and it is not permissible and in the above applications, the cause title is not shown correctly, there is

no proper verification of the pleadings. The translation copies filed along with said applications were in violation of C.P.C and Civil Rules of Practice

and Circular Order, 1980 as such they are not permissible under law, but the trial Court erred in allowing the same. Therefore, requested the Court to

set aside the Common Order dated 27.09.2022.

4. Heard arguments of both sides and perused the entire record.

5. O.S.No.19 of 2011 was filed for permanent injunction restraining defendants from interfering with the peaceful possession of land bearing

Sy.No.115/C to an extent of Ac.0 03 gts, situated at Douthiyal Tarfa, Shivar Bodhan, Bodhan. I.A.No.52 of 2018 was filed on 11.06.2018 and

petitioners in their affidavit stated that they came to know about the execution of sale deed vide Doc.No.2030 of 1985 dated 22.05.1985 in favour of

one Pukala Narsaiah and Mammara Chinamma in the year 2018. Later the said Pukala Narsaiah sold the land in Sy.No.115/C to an extent of Ac.0

03 gts in favour of Anthul Fathima. The plaintiff No.1 stated that she purchased the suit land from Shivaiah in the year 1996 and she sold the said

land to defendant No.4. The vendor of the plaintiff has already sold the land in Sy.No.115/C measuring an extent of Ac.0 3 gts to Pukala Narsaiah

and Mammara Chinamma, but plaintiff No.1 alleged that she purchased the land from Shivaiah and the said allegation is false and with an intention to

play fraud, revenue records have been created by the defendant No.4, who was working in the record room of Tahsil Office, later he was removed

from service. To prove the fraud played by the respondents/plaintiffs, they are filing two registered sale deeds and stated that plaintiffs has no right of

ownership and possession over the suit land. Therefore, requested the Court to receive the documents to re-open and recall of the evidence.

6. In the Counter filed by the respondents/plaintiffs No.1 to 4, they stated that suit was filed for permanent injunction. They purchased the suit

schedule property from M.Shivaiah in the year 1988 and it was regularized through ROR proceedings vide Doc.No.A5/9764/96 under Ex.A4. The

concerned revenue authorities have incorporated the name of plaintiff No.1 in the Pahanies and issued title deed under Ex.A1. The Pahanies under

Ex.A2, Ex.A10 to A13 also shows the possession of plaintiff No.1 over the suit schedule property. The plaintiff No.1 executed Agreement of Sale

cum General Power of Attorney in favour of Plaintiff Nos.2 & 3 vide Doc.No.4464 of 2010 dated 04.04.2010 under Ex.A3 and delivered the

possession. Since then plaintiff Nos.2 & 3 are in peaceful possession and enjoyment of the said property. The Pahanies for the year 2010-11 under

Ex.A2 also proves their possession.

7. The defendants in their written statement contended that defendant No.1 is the owner of the suit schedule land admeasuring Ac.0 ½, 13 gts in

Sy.No.115/AAEE. Out of Ac.0 ½, 13 gts, he gifted 553.38 Sq.yards to his daughter through registered gift deed dated 31.08.2009 under Ex.B7 and

she in turn executed gift deed to an extent of 150.84 Sq.yards vide Doc.No.5400 of 2009 in favour of her husband under Ex.B8. In the said suit, issues

were framed and P.W.1 to P.W.4 were examined on behalf of the plaintiffs and got marked Exs.A1 to Ex.A18. D.W.1 and D.W.2 were examined on

behalf of the defendants and marked Exs.B1 to B40. When the matter was posted for arguments on 28.09.2015, I.A.No.347 of 2015 was filed to

receive two documents i.e, the application dated 18.08.2015 made by defendant No.2 to the Tahsildar, Bodhan and the memo No. G/Records/2015,

dated 17.08.2015 issued by the Tahsildar, Bodhan. I.A.No.348 of 2015 was filed to recall and for further chief examination of P.W.2 and I.A.No.349

of 2015 was filed to re-open the case and for further chief examination of D.W.1 to mark above documents and the trial Court allowed the said

applications. Aggrieved by the said orders of the trial Court, plaintiffs filed revision petitions bearing No.5104, 5132 and 5126 of 2017 before this Court

and all the said revision petitions are dismissed by Order dated 26.12.2021, confirming the Order of the trial Court. The said petitions are returned, as

Stay is pending on 11.06.2018 and the present petition is filed on 22.02.2022 and it is not maintainable and is liable to be dismissed.

8. Petitioners/defendants further stated that as per evidence of D.W1 to D.W3, they are nothing to do with the suit land in Sy.No.115/C. Defendants

are having knowledge of all transactions involving in the suit including ROR Act. They also stated that power to exercise of discretion under the

provisions of Order 18 rule 17 or Order 8(A) rule 2(a) or under Section 151 of C.P.C is not intended to be used routinely, it will defeat the very

purpose of various amendments to the Code of expedite trials. The defendants 1 and 2 have taken a consistent stand in their written statement and

evidence that plaintiffs are not owners and they are not in possession of the suit lands. D.W.1 and D.W.3 admitted that they are claiming land in

Sy.No.115/AAEE and 115/E and not in 115/C. Plaintiffs wrongly mentioned boundaries under Ex.A3 and got executed rectification deed under

Ex.A18 and they filed I.A.No.210 of 2015 to receive the registered supplementary deed of rectification dated 20.12.2014 and also to re-open evidence

of P.W.2. Though, defendants filed counter opposing the same, the trial Court allowed I.A.No.210 of 2015 on 13.08.2015 and P.W.2 cross-examined

at length. They further stated that after completion of evidence of both sides, matter was posted for arguments on 28.09.2015 and they filed all the

said applications at belated stage. Therefore, requested the Court to dismiss the same. The trial Court observed that the documents produced by the

petitioners/defendants are crucial and allowed the applications. Aggrieved by the same, plaintiff No.4 in the suit preferred these revision petitions.

9. The Counsel for the revision petitioner mainly contended that I.A.Nos.51, 52 & 53 of 2018 were filed on 11.06.2018 and the same were returned by

office with certain objection to re-submit the same within 7 days, but they were re-submitted on 05.02.2022, i.e, after 2 years 10 months without any

petition to condone the delay. Admittedly, plaintiffs filed suit for permanent injunction. He contended that plaintiffs are owners and possessors of

agricultural land in Sy.No.115/C to an extent of Ac.0 1/4 03 gts. He also stated that plaintiff No.1 purchased the said land from M.Shivaiah in the year

1988, therefore ROR proceedings, revenue authorities incorporated the pattadar's name in the pahani's and issued title deed and pattadar

pahani's which clearly shows plaintiffs possession over the suit schedule property. He filed original title deed and Pahanies for the year 2005-06 to

2010-11 and later plaintiff No.1 entered into an Agreement of Sale cum General Power of Attorney on 30.05.2010 in favour of plaintiff Nos.2 & 3.

During the pendency of suit, plaintiff Nos.2 & 3 sold the suit schedule property to plaintiff No.4 through a registered sale deed vide Doc.No.3463 of

2013 dated 12.04.2013. Plaint was filed on 09.12.2013, but the said applications to receive the documents were filed on 11.06.2018 and the same were

returned with objection to re-submit within 7 days, but those applications were re-submitted only on 05.02.2022 with an abnormal delay without filing

delay condonation petition, as such the said applications itself are not maintainable. The Counsel for the revision petitioner also pointed out that the

original documents along with translations stated that in the sale deed dated 13.04.1978 vide Doc.No.981 of 1989, the survey number was shown as

115/e and in Doc.No.2030 of 1985 also the survey number was shown as 115/e, but in the translations it was shown as 115/C to mislead the Court.

The Counsel for the respondents in his arguments filed mapping table for the Telugu letters in which it was shown as ఆచార్యుల "C" ఆచార్యుల. As such he

correctly translated the documents and the land in the sale deed sold by him is pertaining to Sy.No.115/C, but in Telugu it was shown as ఆచార్యుల ఆచార్యుల.

Originally, suit was filed for Ac.0 ఆచార్యుల 03 gts of land in Sy.No.115/C, from the contents of the plaint, respondents herein has not filed the above

documents till 22.02.2022 and they have not filed any reasons for delay in filing the said applications. Moreover, suit is for injunction simplicitor and not

for declaration of title. Plaintiff No.4 clearly stated that he is the lawful owner and possessor of the suit schedule property and also filed certain

document to substantiate his version. Therefore, the arguments of the respondents that the vendor of the plaintiff No.1 already sold the land to Pukala

Narsaiah and Mummara Chinamma, as such plaintiff No.1 purchased the land from Shivaiah is false and they are filing two registered sale deeds to

prove the fraud played by the plaintiffs is not tenable. Even in the first part of the plaint, plaintiff stated that he purchased land from Shivaiah and the

document intended to be filed by him are pertaining to the year 1985, as such he should have file document along with written statement or he has to

submit reasons for not filing the same during the course of proceedings. Admittedly after the evidence of both sides, matter was posted for arguments.

At that stage, he filed these applications. Considering the nature of the suit and the nature of documents filed by the revision petitioner, this Court finds

that the trial Court allowed the applications without appreciating the facts properly. Therefore, the Common Order of the trial Court is liable to be set

aside.

In the result, these Civil Revision Petitions are allowed by setting aside the Common Order of the trial Court in I.A.Nos.51, 52 & 53 of 2022 in

O.S.No.19 of 2011 dated 27.09.2022. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.