

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND THIRTEEN

PRESENT

THE HON'BLE MR JUSTICE B.CHANDRA KUMAR

-
CIVIL REVISION PETITION No.428 of 2012

Between:

Borra Ramana Reddy and another

..... PETITIONERs/DEFENDANTS

AND

Kasireddy Hanumayamma

.....RESPONDENT/DEFENDANT

The Court made the following:

**THE HONOURABLE SRI JUSTICE B.CHANDRA
KUMAR**

CIVIL REVISION PETITION No.428 of 2012

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ORDER:

The Civil Revision Petition is filed by the petitioners/defendants challenging the order dated 13.10.2011 passed by the learned Junior Civil Judge, Kota, SPSR Nellore District in I.A.No.268/2010 in O.S.No.32/2002, vide which, the learned Judge dismissed the application filed by the petitioners/defendants under Sec.151 CPC

seeking a direction to the respondent/plaintiff to produce Ex.A9 before proceeding with the cross examination of PW 2.

Heard both sides

The parties herein are referred to as plaintiff and defendants for the sake of convenience.

The plaintiff filed the suit for perpetual injunction in respect of the suit schedule property. She filed agreement of sale dated 05.03.1978 executed by one P.Rajagopal Reddy in favour of the plaintiff. It appears that the said document was marked as Ex.A9. The plaintiff filed a Memo to return the said document in C.F.No.276 dated 19.02.2008. Then it was returned to the plaintiff on her giving an undertaking to produce the same at the time of arguments. On 28.07.2008 the defendants filed a Memo on which the plaintiff was directed to produce the said agreement of sale. But the plaintiff did not comply with the said direction. Then the defendants filed I.A.No.268/2010 seeking a direction to the plaintiff to produce Ex.A9 before proceeding with the cross examination of PW 2.

The Court below, after referring to the orders made in CRP Nos.3160, 3266, 3281 & 3396 of 2008 which are filed against the orders passed in I.A.Nos.242, 240, 243 & 241 of 2008, and by observing that this Court allowed all CRPs except CRP No.3396/2008 and directed to recall PW 2, to reopen the suit and to receive the documents filed by the plaintiff for the purpose of marking them through PW 2 and that there is no reference to Ex.A9 and hence the plaintiff cannot be directed to produce Ex.A9 as per the orders of this Court, dismissed the application.

The learned counsel for the petitioners submits that the plaintiff has given an undertaking to produce the document at the time of trial and failed to produce the same and that the order of the Court below is not justified.

The learned counsel for the respondent has supported the

impugned order and submits that there was Lok Adalat settlement in O.S.No.14/2008 in which the document in question was filed and in that suit the said document was marked and therefore, the Court below is justified in passing the impugned order in view of the earlier orders of this Court.

The only point that arises for consideration is whether lower Court is justified in dismissing I.A.No.268/2010 merely on the ground that this Court has passed certain orders in CRPs Nos.3160, 3266, 3281 and 3396 of 2008.

It has to be seen that it is not the defendants who filed I.A.Nos.242, 240, 243 and 241 of 2008, but it is the plaintiff who filed those interlocutory applications. There was no occasion for this Court to refer to Ex.A9 in the above CRPs. Admittedly, the agreement of sale-Ex.A9 was filed by the plaintiff and subsequently she has taken back with an undertaking to produce the same at the time of arguments. It appears that basing on Ex.A9, the plaintiff has filed O.S.No.14/2008 for specific performance of contract. It appears that the defendants herein are not parties to the said suit. It may be a fact that the said suit has been settled before the Lok Adalat.

It is not in dispute that it is the plaintiff who filed I.A.No.240/2008 to recall PW 2 for the purpose of marking documents. I.A.No.241/2008 was filed for appointment of an Advocate-Commissioner to note down the extent with the boundaries with the help of a Mandal Surveyor. I.A.No.242/2008 was filed to receive documents and I.A.No.243/2008 was filed to reopen the suit. Those applications were dismissed by the Court below on the ground that they are belated. It appears that plaintiff filed award of Lok Adalat passed in O.S.No.14/2008 and that the said document came into existence subsequent to filing of the suit. Some cist receipts were also filed. This Court, while passing common order in CRP Nos.3160, 3266, 3281 and 3396 of 2008 which were

filed challenging the orders in I.A.Nos.242, 240, 243 and 241 respectively, allowed CRP Nos.3160, 3266 and 3281 of 2008 and dismissed CRP No.3396/2008 which was filed against the rejection of appointment of Advocate-Commissioner in I.A.No.241/2008. This Court directed the Court below to recall PW 2, reopen the suit and to receive the documents through PW 2.

The Court below failed to observe that I.A.Nos.242, 240, 243 and 241 of 2008 were filed by the plaintiff and when the same were dismissed, the plaintiff approached this Court. This Court allowed the CRP Nos.3160, 3266 and 3281 of 2008 except CRP No.3396/2008 and gave certain directions. The directions given by this Court on the applications filed by the plaintiff does not mean that the defendants are precluded from filing any application to summon Ex.A9. The orders passed in the above CRPs do not come in the way of the defendants in filing I.A.No.268/2010 and in cross examining PW 2 or any other witness basing on Ex.A9. The contentions of the defendants have to be appreciated separately irrespective of the orders passed by this Court in the above referred CRPs.

In view of the above, the Civil Revision Petition is allowed. Consequently, I.A.No.268/2010 filed by the defendants stands allowed. It is made clear that if for any reasons the plaintiff fails to produce the document, the Court below may exercise its powers under Order 13 Rule-10 CPC and send for Ex.A9 from the concerned Court. No order as to costs.

CRP MP.No.601/2012 shall stand closed in consequence.

B.CHANDRA KUMAR,J

Date: 30.09.2013

Dsr