

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL 2017

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

WRIT PETITION NOS.6085-6088 OF 2017 (GM-CPC)

Between:

D.N. Ramakrishna
S/o Narayana Gowda
Aged about 39 years
R/at Apartment No.SF-6
'Shakthi apartments'
No.30/15, 2nd Main Road
Nagasetthalli, Maruthi Extension
Bengaluru - 560094

...Petitioner

(By Sri. Chidambara for
Sri. Ravindranath M. Advocate)

And:

1. Mr. Srinivas Ramaswamy
S/o Sri. Ramaswamy
Aged about 53 years
2. Smt. Latha Rama Murthy
W/o Srinivas Ramaswamy
Aged about 48 years
(Both r/at No.15433,
Mountain View Lane Frisco
TX-75035, USA)

Represented herein by their
GPA Holder
Sri.B. Rama Murthy
S/o Late Byrappa
Aged about 77 years
R/at No.261,
'Sree Shiva Krupa'
1st C Main, 2nd Stage
Mahalakshmipuram post
Bengaluru – 560086

... Respondents

These Writ Petitions are filed under Article 227 of the Constitution of India praying to quash the common order dated 01.02.2017 passed on I.A.No.11 to 14 in O.S.No.9731/2014 by the Court of the VII Additional City Civil Judge at Bangalore as per Annexure-A and etc.

These Writ Petitions coming on for Orders this day, the court made the following:

ORDER

Heard learned advocates appearing for the parties.

Perused the case records.

2. Respondents are plaintiffs in O.S.No.9731/2014 and said suit has been filed for recovery of possession of suit schedule premises with a direction to the defendant to vacate, hand over

possession and pay damages at the rate of Rs.20,000/- per month from the date of suit till physical delivery of possession of the suit schedule premises to plaintiff. During the pendency of the proceedings, plaintiffs filed four applications i.e., I.A.Nos.11, 12, 13 and 14 for reopening, recalling of PW1, delay in production of documents and to tender secondary evidence. Trial Court by impugned order has allowed all the four applications. In so far as allowing the application I.A.Nos.11, 12 and 13, trial Court has given sufficient reasons, which would not call for interference. Hence, writ petitions filed challenging the same stands rejected.

3. However, Sri.Chidambara, learned advocate appearing on behalf of Sri.M.Ravindranath has vehemently contended that in so far as allowing I.A.No.14 by trial Court and permitting the plaintiffs to mark photostat copy of Renewal Lease Agreement dated

05.06.2012 is impermissible and photostat copy could not have been allowed to be marked.

4. Per contra, Sri.Vinay.G, learned advocate appearing for the respondents/plaintiffs would defend the order by contending that mandate of Section 65 of the Indian Evidence Act, 1872 commands that a party intending to tender secondary evidence if has laid foundation and satisfies the criteria prescribed thereunder, then he can be permitted to lead evidence and in the instant case said foundation has been laid by the plaintiffs at the initial stage itself and has drawn the attention of the Court to paragraph 5 of the plaint-Annexure-G and as such, he contends there is no error committed by the trial Court allowing the applications.

5. A bare reading of Section 65 of the Indian Evidence Act, 1872 would disclose that under the contingency prescribed in clause (a) of Section 65,

secondary evidence can be given as to the existence, condition or contents of the documents apart from contingencies prescribed under clauses (b) to (g) of Section 65. In so far as present case is concerned clause (a) would suffice and it reads as under:

“65. Cases in which secondary evidence relating to documents may be given.-

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it.”

6. The above provision would clearly indicate that when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved and is legally bound to

produce it, even after notice is issued under Section 66, namely, under Order XII Rule 8 of the CPC and even then it is not produced, the party/applicant relying on such document would be entitled to tender secondary evidence. Perusal of the case papers would disclose that plaintiffs have categorically stated in the plaint that original agreement now sought to be produced by way of secondary evidence is in the custody of the defendant. Notice also came to be issued by the plaintiff to the defendant under Order XII Rule 8 of CPC calling upon the defendant to produce and show to the Court the original lease agreement dated 05.06.2012 and this fact has also been reiterated at paragraph 6 of the affidavit supporting the application. As such, the trial Court after taking note of the law laid down by the Co-ordinate Bench in the case of **GAFARSAB @ SATI GAFAR SAB VS AMEER AHAMED ON 29 SEPTEMBER, 2005** reported in **AIR 2006 Kant 95**, has permitted plaintiffs to tender the document namely photocopy of lease deed

dated 05/06/2012 by way of secondary evidence and at the same time has permitted the defendant to object to the marking of such document and has held that consideration of such objection would be dealt while considering the case on merits. This would also safeguard the interest of the defendant and as such, impugned order does not call for interference. Hence, this Court is of the view that there is no merit in the contentions raised by Sri.Chidambara, learned advocate for petitioner and same stands rejected.

7. Taking into consideration that suit is of the year 2014 and filed for ejectment and the fact that proceedings has moved at a slow pace, direction deserves to be issued to the trial Court to dispose of the suit expeditiously within the time frame. Hence, trial Court is directed to dispose of the suit on or before 31.07.2017 subject to both parties cooperating with the trial Court and it is needless to state if either of the

parties were to seek for an adjournment without any justifiable cause to the satisfaction of trial Court, it would be at liberty to impose costs on such of those persons, who seek for adjournment.

Ordered accordingly.

**SD/-
JUDGE**

dn/mbm