

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.1176, 1177 and 1178 2019

COMMON ORDER:

These three Revisions arise out of the same suit between the same parties and therefore, they are being disposed of by this common order.

2. The petitioner herein is the plaintiff in O.S. No.161 of 2012 on the file of I Additional District Judge, Karimnagar.

3. She filed the said suit for partition of the plaint schedule properties and for allotment of 1/3rd share to her and for other reliefs.

4. After the trial is concluded and the matter is posted for arguments the petitioner filed I.A. Nos.177, 178 and 179 of 2019, to reopen the suit, to receive the documents on file and for recalling P.W.1 under Order XVIII Rule 17 CPC.

5. In all these applications it is the contention of the petitioner that defendants 1 and 2 had contended that 1st defendant had lands in Panthulakondapur village and Sangem Villages which were purchased by him with his own earnings but these properties are ancestral joint family properties and in a notification, issued under Land Acquisition Act, 1894 on 03.11.1977, the name of the father of the 1st defendant was shown as enjoyer to an extent of 1/3rd share; that the 1st defendant had filed I.A. No.1295 of 1998 in O.P. No.452 of 1985 on the file of Senior Civil Judge, Karimnagar seeking enhancement of compensation in respect of ancestral house properties of D1; these documents are necessary for disposal of the suit; and therefore, the evidence be reopened, P.W.1 be recalled, documents be permitted to be marked.

6. By common order dt.09.04.2019, the Court below dismissed the three applications. It held that the written statement was filed by D1 and D2 on 21.11.2012 and elaborate trial went on, but the petitioner did

not choose to bring these documents till trial was completed. It observed no reasons are assigned by the petitioner stating the circumstances that prevented her from obtaining these documents till 10.12.2018.

7. It also noted that these documents were obtained on 17.12.2018 by the petitioner and she filed these applications on 15.03.2019 and not immediately and did not give reasons for abnormal delay in filing these petitions.

8. It relied on the judgment of the Supreme Court in **M/s.Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai V. M/s. Gupta Building Material Store Arising out of S.L.P.(C) No.35263 of 2011** and held that power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be *bona fide* and where the additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issues and will assist in rendering justice, and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence.

9. Challenging the same, these Revisions are filed.

10. Though the counsel for the petitioner sought to contend that these documents are very important to establish the case of the petitioner in the suit, as rightly observed by the Court below no reason is assigned by the petitioner why these documents, which were available even prior to the filing of the suit in 2012, were not filed with the plaint.

11. Also having obtained these documents on 17.12.2018 petitioner did not explain why she kept quiet till 15.03.2019 to file these applications.

12. The suit is of the year 2012 and the suit is coming up for arguments and at this stage, these applications have been filed.

13. Petitioner cannot rightly Order XVIII Rule 17 CPC or under Order VII Rule 14(3) CPC to procrastinate the matter.

14. Therefore, I agree with the reasoning of the Court below and do not find any error of jurisdiction in the impugned order passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India. Therefore, these Revisions fail and are dismissed. There shall be no order as to costs.

15. As a sequel, miscellaneous applications, if any, pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 30.04.2019
LSK

