

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

***HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CIVIL REVISION PETITION No. 1686 OF 2023

% Delivered on:07-07-2023

Between:

Kyatham Rajkumar, .. Petitioner

Vs.

\$ Vaddepalli Rajamani .. Respondent

! For Petitioner : Mr. G.Anandam,
Ld.counsel

^ For Respondent : Mr.Dasi Ramesh
Ld.counsel

< Gist :

> Head Note :

? Cases Referred :

1. (2020) 10 SCC 706
2. 2022 Live Law (SC) 533
3. Judgment dated 03.11.2020 in
Civil Appeal Nos.4883-4884 of 2017,
4. 1987 (1) SCC 254
5. AIR 1987 SCC 1242
6. 2011 (11) SCC 786
7. 2012 (8) SCC 148

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
CIVIL REVISION PETITION No.1686 OF 2023

ORDER:

Heard Sri G.Anandam, learned counsel for the petitioner and Sri Dasi Ramesh, learned counsel appearing for respondent No.1/Defendant No.3.

2. This revision is filed under Article 227 of the Constitution of India challenging the order dated 27.03.2023 in I.A.No.54 of 2023 in O.S.No.366 of 2017 passed by the learned Senior Civil Judge at Narsampet.

FACTS OF THE CASE:-

3. The petitioner herein filed a suit vide O.S.No.10 of 2020 initially against the respondents 1 to 4 herein and late Smt. Kyatham Iylamma (Defendant No.2) seeking partition and separate possession of suit schedule properties therein. The said suit was filed in February, 2000 before the Senior civil Judge, at Warangal and it was assigned number as O.S.No.10 of 2000. On constitution of Junior Civil Judge Court at Narsampet, the said suit was transferred to the said Court on pecuniary jurisdiction and the suit number was re-assigned as O.S.No.366 of 2017.

4. Originally, the said suit was filed for partition and separate possession in respect of items 1 to 5 of the suit schedule properties. 1st respondent herein/D.3 and D.2 have filed written statement on 19.07.2000. Item Nos.1 and 2 of suit schedule – B property were added to the said suit and D.6 was impleaded. As per the order dated 29.06.2012 in I.A.No.68 of 2011. 1st respondent herein/D.3 filed additional written statement on 12.10.2012. when the said suit was posted for evidence of 1st respondent herein/D.3 and D.6, 1st respondent herein/D.3 filed Interlocutory Application vide I.A.No.54 of 2023 in O.S.No.366 of 2017 under Order VIII Rule 1(A) (3) of CPC read with Section 151 of CPC to receive original will deed (notarized) dated 16.06.2008 (Notarized) executed by K.Iylamm/D.2, mother of D.3 on the following grounds:-

- i. D.2, mother of D.3 during her lifetime executed a will deed (notarized) dated 16.06.2008 in her favour in respect of item Nos.1 to 5 of suit schedule- A properties.
- ii. D.2 died on 06.06.2008 and therefore, the said will deed came into force.
- iii. During the course of trial of the suit, the Court was pleased to mark the documents on her behalf. On recording and closure of

plaintiff evidence, learned Junior Civil Judge, Narsampet returned the plaint for want of pecuniary jurisdiction as the plaintiff added suit schedule-B property by impleading D.6.

- iv. The plaint was presented before the learned Senior Civil Judge, Mahabubabad for further proceedings.
- v. After establishment of Senior Civil Judge's Court at Narsampet, the suit was transferred to the said Court and the proceedings were commenced.
- vi. The plaintiff and D.W.1 are well aware of the execution of the will deed by D.2, mother of D.3.
- vii. The said fact was put to D.W.1 during the cross-examination by the learned counsel for the petitioner/D.3. The will deed dated 16.06.2008 was not filed before the Court and she noticed that the said will is required to submit for better adjudication of suit proceedings and it is an important document.
- viii. The said document is relevant and crucial for adjudication of the said suit. If the same is not received, she will be put to irreparable loss and hardship.
- ix. No prejudice will be caused to other side if the aforesaid document is received by the Court.

5. The said application was opposed by the plaintiff and the D.1 on the following grounds:-

- i. The said will deed dated 16.06.2008 is forged and created one with afterthought in order to grab the suit schedule property.
- ii. The said will deed is subsequent to the filing of the suit.
- iii. It was prepared at Hanumakonda in collusion with District Notary, from Hanumakonda and Khazipet only.
- iv. The said Notary was in violation of the rules applicable and D.3 created the same in collusion with the said District notary.
- v. The suit was filed in the year 2000, whereas, the alleged will deed has been executed on 16.06.2008 i.e. after 8 years of filing of the suit.
- vi. The properties mentioned in the alleged will deed does not belong to the executant i.e. D.2. She has no right to execute it in favour of D.3.
- vii. The properties belong to late Kyatham Shivarajan, husband of D.2.
- viii. The said will deed was not filed before the Court along with the written statement or at least along with the additional written statements which was filed on 12.10.2012.

- ix. There is no pleading with regard to the execution of said will deed in the additional written statement filed by the defendant No.3 on 12.10.2012. D.3 and her counsel did not cross-examine the D.W.1, P.W.1 by putting suggestions to them.
- x. There is abnormal delay in filing the said will deed without proper reasons and explanation. It is not at all relevant for just disposal of the case. The D.3 filed the said Interlocutory Application to drag on the proceedings and no prejudice would be caused to the D.3, if the said document is not received.

6. The Court below vide impugned order dated 27.03.2023 allowed the said application on the ground that though there is no pleading in the additional written statement filed on 12.10.2012 by D.3 with regard to execution of the said will deed despite having knowledge, the suit was transferred etc., D.3 did not whisper about the existence of will deed executed by D.2 so also nowhere in the cross-examination of P.W. 1 and D.W.1 it was suggested, mere receiving of the document on record, it cannot be said that all the flaws of the petitioner were allowed by the Court. It is the burden on D.3 to establish that the will deed was executed by D.2 during her lifetime and unless and until an opportunity is not given to her, it cannot be said that

fair justice will be done to the parties to the suit. The suit is coming up for evidence of D.3 and as such D.3 is having every right to file required and relevant documentary proof in support of her contention/non-contention as she being the defendant can take inconsistent pleas. It is the duty cast upon D.3 to establish her case with cogent documentary and oral evidence. If D.3 is not allowed by permitting to lead evidence either oral or documentary, the matter cannot be disposed of on merits. With the said findings, the Court below allowed the said application on imposition of Rs.300/- towards costs.

CONTENTIONS OF LEARNED COUNSEL FOR THE PETITIONER:-

7. Sri G.Anandam, learned counsel appearing for petitioner would submit that though D.3 can file documents under Order VIII Rule 1(A) of CPC at any stage, the Court below has to receive the same, but at the same time, D.3 shall lay foundation and explain the reasons for filing such an application to receive such documents in the application filed. In the present case, D.3 did not mention about the execution of the said will deed dated 16.06.2008 in the additional written statement filed on 12.10.2012. D.3 did not mention satisfactory reasons for filing the aforesaid I.A.No.54 of 2023 seeking to receive

the said will deed dated 16.06.2008. The Court below without considering the contention of the petitioner herein that D.3 did not lay foundation while filing I.A.No.54 of 2023 to receive the will deed dated 16.06.2008, allowed the application. It is a created and forged document and the petitioner/plaintiff will be put to irreparable loss and injury if the same is received. With the said submissions, he sought to set aside the impugned order.

CONTENTIONS OF LEARNED COUNSEL FOR 1ST RESPONDENT:-

8. Sri Dasi Ramesh, learned counsel appearing for 1st respondent/D.3 would submit that though execution of the said will deed dated 16.06.2008 is not mentioned in the additional written statement filed by D.3 on 12.11.2012, a suggestion was put to P.W.1 during cross-examination in respect of execution of the said will deed by D.2 in favour of D.3. Similar suggestions were put to D.W.1. Considering the said aspects and also in exercise of discretion under Order VIII Rule 1(A) of CPC, the Court below allowed the said application filed by D.3. There is no error in the impugned order. The plaintiff, instead proceeding with the case, filed the present revision to drag on the proceedings.

FINDING OF THE COURT:-

9. In view of the said rival contentions, it is relevant to extract Order VIII Rule 1(A) which provides the procedure for production of documents by the defendant:-

1. Written Statement.-

The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record;

1A. 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) 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.]

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

(a) produced for the cross-examination of the plaintiff's witnesses, or

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

10. As per the aforesaid provision, the defendant can be permitted to file documents which were not filed along with the written statement with the leave of the Court. The Court is having discretion to grant leave to the defendant. At the same time, the discretion conferred upon the Court to grant such leave is to be exercised judiciously. There is no straitjacket formulae to grant leave by the Court on good cause being shown by the defendant. Thus, the Court has to exercise power conferred on it under Order VIII Rule 1 (A) judiciously.

11. The issue of receipt of documents filed by the defendant under Order VIII Rule 1(A) (3) of the CPC is no more *res integra*.

12. In **Sugandhi (Dead) by legal representatives Vs. P.Rajkumar represented by its Power Agent Imam Oli¹**, the Apex Court in paragraph No.9 held as follows:-

It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause

¹ (2020) 10 SCC 706

prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

13. It was further held that the discretion conferred upon the Court to grant leave under Order VIII Rule 1(A) (3) of the CPC is to be exercised judiciously.

14. In the said case, the defendants filed application to receive the documents on the ground that the same were missing and were only traced at a later stage. Therefore, the Apex Court on coming to conclusion held that the defendants have assigned cogent reasons for not producing documents along with the written statement and though it cannot be disputed that those documents are necessary for arriving at a just decision in the suit, granted leave to the defendants to produce the said documents.

15. In **Levaku Pedda Reddamma Vs. Gottumukkala Venkata Subbamma**², the Apex Court held that it is well settled that the Rules of procedure are handmade of justice and therefore even if there is

² 2022 Live Law (SC) 533

some delay, the trial Court should have imposed some costs rather than to decline production of the documents itself.

16. In **Biraji @ Brijraji Vs. Surya Pratap**³, the Apex Court held that it is fairly well settled that in the absence of pleading, any amount of evidence will not help the party. On examination of the facts therein, though adoption ceremony which had taken place on 14.11.2001, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at a belated stage to summon the record to prove that the second respondent therein was on duty as on 14.11.2001. With the said findings, the Apex Court confirmed the orders passed by the trial Court and revisional court.

17. Relying on **Sugandhi** and **Levaku** (supra), Coordinate Bench of this Court in the common order dated 21.11.2022 in CRP No.1736 and 1738 of 2022 and in order dated 31.03.2023 in C.R.P.No.702 of 2023 held that permission can be granted to the defendants to file documents by granting leave subject to relevancy, admissibility and proof and payment of costs.

³ judgment dated 03.11.2020 in Civil Appeal Nos.4883-4884 of 2017,

18. In view of the aforesaid law laid down in the judgment cited supra, the questions to be considered by this Court in the present case are as follows:-

1. Whether the 1st respondent/D.3 laid foundation/explained reasons satisfactorily, to grant leave to file the aforesaid notarized will deed dated 16.06.2008 said to have been executed by her mother in her favour?
2. Whether impugned order granting leave suffers from any infirmity?

19. As discussed supra, there are no disputes with regard to the facts. Initially the suit was filed in the year 2000 before Junior Civil Judge Court, Warangal, seeking partition and separate possession of the item Nos.1 to 5 of the suit schedule properties. It was transferred to the Junior Civil Judge's Court, Narsampet, on constitution of the said Court. Thereafter, the petitioner/plaintiff filed I.A.No.68 of 2011 to add items 1 and 2 of suit schedule-B property and also to implead defendant No.6. The said I.A. was allowed on 29.06.2012. The said suit was transferred to Senior Civil Judge's Court, Mahabubabad, on pecuniary jurisdiction. Thereafter, the same was transferred to Senior Civil Judge's Court, Narsampet on constitution of the said Court.

20. 1st respondent/D.3 filed written statement on 19.07.2000 and additional written statement 12.10.2012. It is not in dispute that 1st respondent/D.3 did not plead about the execution of the aforesaid will deed dated 16.06.2008 in the additional written statement filed by her on 12.10.2012. During further cross-examination of P.W.1, dated 03.02.2010, learned counsel for the defendant No.3 put a question to P.W.1 with regard to execution of will deed by D.2 in favour of her daughter D.3. However, P.W.1 denied the said suggestion. It is also relevant to note that the said suggestion was also put to D.W.1 on 06.03.2023 and 08.03.2023. He also denied the same.

21. It is relevant to note that in the suggestions put to P.W.1, there is no suggestion with regard to date of execution of the said will deed i.e. 16.06.2008, at the same time, there is a suggestion to P.W.1 with regard to execution of will deed by D.2 in favour of D.3 on 03.02.2010 itself. Even then, the said fact was not mentioned in the additional written statement filed by D.3 on 12.10.2012. Thus, without pleading, 1st respondent/D.3 put suggestion to P.W.1 during cross-examination with regard to execution of the said will deed by D.2 in favour of D.3.

22. As held by the Apex Court in **Sugandhi** and **Levaku** (supra) there is no straitjacket formula with regard to granting of leave. The Court has to consider with regard to good cause being shown by the defendant. The procedure is handmade of justice. Procedural and technical hurdles shall not be allowed to come in the way of Court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. The Courts should take a lenient view when an application is made for production of the documents under sub-Rule (3). Thus, the Court below has to exercise its jurisdiction while granting leave judiciously.

23. As discussed supra, though the said will deed said to have been executed by D.2 in favour of D.3 on 16.06.2008, the same was not pleaded in the additional written statement filed by 1st respondent/D.3 on 12.10.2012 and she did not file the same along with additional written statement. A vague suggestion without referring to date of execution of will was made to P.W.1 during cross-examination. Similar suggestion was made to D.W.1 during cross-examination in March,

2023. However, an application vide I.A.No.54 of 2023 in O.S.No.366 of 2017 was filed on 13.03.2023 i.e. after 15 years of its execution.

24. In **Duggi Veera Venkata Gopala Sathyanarayana Vs. Sakala Veera Raghavaiah**⁴, Apex Court held that any amount of proof offered without appropriate pleading is generally of no relevance. In **Biraji** (supra), the Apex Court held that in the absence of pleading, any amount of evidence will not help the party. In **Ramsarup Gupta (dead) by L.Rs Vs. Bishun Narain Inter College**⁵, the Apex Court held that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. The said principle was also reiterated by the Apex Court in **Kalyan Singh Chowhan Vs. C.P.Joshi**⁶.

25. In **Union of India Vs. Ibrahim Uddin**⁷, relying on principle laid down in **Kalyan Singh** (supra), Apex Court held that no evidence

⁴ 1987 (1) SCC 254

⁵ AIR 1987 SCC 1242

⁶ 2011 (11) SCC 786

⁷ 2012 (8) SCC 148

is permissible to be taken on record in the absence of pleadings in that respect.

26. It is relevant to note that in the impugned order the Court referred the aforesaid facts that D.3 did not plead with regard to execution of will deed dated 16.06.2008 in the additional written statement filed on 12.10.2012 and transfer of case etc., and held that it cannot be said that all the flaws of the petitioner therein were allowed by the Court. The petitioner therein did not whisper about existence of the will deed executed by the D.2 and also nowhere in the cross-examination of D.W.1 and P.W.1 it was suggested about the execution of will deed by the D.2 bringing to the notice of the Court as well as parties. As discussed supra, on 03.02.2010 it was suggested to P.W.1 by D.3 with regard to execution of will by her mother in her favour. But there is no reference to date of execution and it was not even pleaded in additional written statement and not filed along with the Additional written statement. Therefore, according to this Court, 1st respondent/D.3 did not lay foundation and she did not mention satisfactory reasons while seeking leave to receive the said will deed dated 16.06.2008.

27. As discussed supra, 1st respondent/D.3 has to plead with regard to execution of will deed dated 16.06.2008 in the additional written statement or file the same along with additional written statement which she did not do so. Mere putting a vague suggestion to P.W.1 during cross-examination without reference to date of execution of will is not sufficient. 1st respondent/D.3 shall plead, lay foundation and then file application to receive the said will deed explaining the reasons for not filing the same along with additional written statement. Moreover, she has filed the present Interlocutory Application after a lapse of 15 years, that too, without explaining the delay. This is not a case to take a lenient view. In the absence of pleading, any amount of evidence will not help the party.

28. There is no consideration of the said aspects by the Court below in the impugned order. Thus, it suffers from infirmity and it is liable to be set aside and accordingly it is set aside.

29. In the result, this Civil Revision Petition is allowed. The order dated 27.03.2023 in I.A.No.54 of 2023 in O.S.No.366 of 2017 passed by the learned Senior Civil Judge at Narsampet, is hereby set aside. Since the suit is of the year 2020, learned Senior Civil Judge at Narsampet is directed to dispose of the said suit in accordance with law

as expeditiously as possible preferably within a period of three months from the date of receipt of date of this order.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE K. LAKSHMAN

Date:07.07.2023

**Note: L.R. copy to be marked.
b/o. vvr**