

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH**

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CIVIL REVISION PETITION No.2365 OF 2015

Between:

Souda Ravi and others.
Petitioner

..

And

Udugula Yadagiri and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 25-08-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals
3. Whether Their Lordship wish to
see the fair copy of the Judgment?
Yes/No

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 2365 of 2015

ORDER:

This Revision petition is filed under Article 227 of the Constitution of India challenging the order dated 15.04.2015 in I.A.No.144 of 2015 in O.S.No.52 of 2007 of the Senior Civil Judge, Jangaon.

2. The petitioners herein are plaintiffs in the suit. They filed the above suit for perpetual injunction restraining the respondents from interfering with their possession and enjoyment of the plaint schedule property of an extent of Ac.14.00 in Nellutla Village, Lingala Ghanpur Mandal, Warangal District.

3. Written statement –cum- counter claim was filed by respondent Nos.12 to 15 opposing the suit claim.

4. Trial concluded and matter was posted for arguments. At that stage, petitioners – plaintiffs filed I.A.No.144 of 2015, under Order XVI Rule 17 of the Code of Civil Procedure (CPC), to summon defendant Nos.9 and 10 and one Akula Nagaraju as witnesses. They alleged that they are crucial to establish their case and that respondent No.10 – defendant No.10 had purchased the petitioners' land at Jangaon and paid sale proceeds to respondent No.9, who is the vendor of the suit land of

Ac.14.00, in which the petitioners have a share.

5. This application was opposed by respondent Nos.12 to 15 contending that defendant Nos.9 and 10 had remained ex parte and their evidence is not necessary. It was further contended that the petitioners did not file any list of witnesses before the Court below and, at the stage of arguments, summoning of witnesses cannot be done and the petitioners filed this petition only to drag on the matter.

6. By order dated 15.04.2015, the Court below dismissed the said application. It observed that the suit is for perpetual injunction filed by the petitioners; they have to establish that they are in lawful possession of the suit schedule property as on the date of filing of the suit; therefore, they have to lead independent and cogent evidence to establish their case; and they cannot depend upon the failure of the defendants to prove their case. It held that the intention of the petitioners to prove their case by summoning some of the defendants is impermissible under law. It also held that merely because respondent No.10 is the purchaser of the land of the petitioners at Jangaon and he paid sale proceeds to respondent No.9, who is the vendor of the suit land, their evidence would not have any bearing on the case and they are not material or relevant witnesses and the application appears to have been filed to drag on the proceedings.

7. Challenging the same, the present Revision

petition is filed.

8. Learned Counsel for the petitioners contended that the order passed by the Court below is incorrect, that it ought to have allowed the said I.A. and summoned respondent Nos.9 and 10 and also Akula Nagaraju as witnesses to be examined by the petitioners.

9. The suit filed by the petitioners is one for injunction and, therefore, possession on the date of filing of the suit is the main issue to be gone into in the suit. Title to the property may be incidentally in issue but it is not the case of the petitioners that under any document executed by defendant No.9 – respondent No.9, along with other defendants, they were given share in the suit schedule land. Therefore, the petitioners can prove their case by examining witnesses to prove their possession of the suit schedule land or by marking relevant pahanies to prove their possession. Respondent Nos.9 and 10 do not appear to be relevant witnesses in as much as respondent No.10 is alleged to be the purchaser of the petitioners' land at Jangaon, who is alleged to have paid sale proceeds to respondent No.9. Since title is only incidental to the issue, their evidence would have no bearing. Therefore, I am of the opinion that respondent Nos.9 and 10 and Akula Nagaraju need not be summoned at this belated stage when the suit is posted for arguments. Hence, I do not find any error of jurisdiction in the order of the Court below refusing to allow I.A.No.144

of 2015.

10. The Civil Revision Petition is without merit and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No order as to costs.

M.S.RAMACHANDRA RAO,J

Date:25.08.2015

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