

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.946 of 2015

Between:

Yandapalli Subbayamma

.....Petitioner

and

Varanasi Veeranjanyulu

.....Respondent

Date of Judgment pronounced : 03-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.946 of 2015

ORDER:

Heard Sri M.Rajamalla Reddy, learned counsel for the

petitioner and Sri Raja Reddy Koneti, learned counsel for respondent.

2. This Revision Petition is filed challenging the Order dt.23-02-2015 in I.A.No.583 of 2014 in O.S.No.40 of 2010 of the Principal Junior Civil Judge, Gurazala.

3. Petitioner herein is defendant in the above suit. Respondent/plaintiff filed the said suit for specific performance of an agreement of sale executed by the petitioner in his favour.

4. Petitioner filed Written Statement denying the execution of the agreement of sale and contending that the said agreement of sale is forgery.

5. Trial commenced. Evidence on the side of the respondent was concluded and the matter was posted to 25-09-2014 to enable the petitioner to lead evidence on her behalf.

6. Just prior thereto, she had filed petition under Order 26 Rule 10-A CPC to send her admitted signatures available in registered sale deeds executed by her bearing document Nos.306/2003, 4398/1998 and 1199/1995 on the file of the Sub-Registrar, Piduguralla for comparison of the same with the plaint, vakalat and other papers containing signatures in O.S.No.185 of 1988 on the file of the Court. The said application had been

returned by the Court below on the ground that those documents should also be made available by her, and till then, it cannot pass orders on that application.

7. The petitioner therefore filed I.A.No.583 of 2014 contending that the above documents are in possession of the purchasers from her by name a) Chavidishetti Aadinarayana, S/o.Vusenaiah (registered sale deed bearing document No.1199/1995), b) Eemani Srianjaneyulu, S/o.Venkatasubba Rao (registered sale deed bearing document No.4398/1998) and c) Molabanti Rambabu, S/o.Raghavaiah (registered sale deed bearing document No.306/2003), all residents of Brahmanapally, H/o.Kamepally village of Piduguralla Mandal, Guntur District, and therefore they may be summoned under Order 16 Rule 6 CPC to produce original registered sale deeds in their possession.

8. Counter was filed by the respondent opposing this application contending that this application is intended only to drag on the suit. It is contended that it is not known whether the said original documents are readily available with the said persons or not, and the petitioner should first verify and ascertain the existence of the original of these documents with the said persons and if not copies of the documents should have been obtained and filed along with I.A.No.583 of 2014 to avoid further delay. He further contended that the process of

summoning these persons to produce documents cannot be resorted to and that even if the documents referred to by the petitioner could be secured under process of law, it would take an abnormally long time and protract the trial.

9. By order dt.23-02-2015, the Court below dismissed the said application. It held that it is for the petitioner to obtain the above documents from the concerned persons and since it was not known whether those documents exist or not, the Court cannot direct such third parties to produce documents to prove the contention of the petitioner regarding genuineness of the signature. It held that it is for the petitioner to take necessary steps to send her admitted signatures along with agreement of sale to the expert for opinion and there is no need to issue summons to the proposed witnesses directing them to produce the originals of the above registered sale deeds which are not connected with the present case.

10. Challenging the same, this Revision Petition is filed.

11. Learned counsel for the petitioner contended that the order passed by the Court below is unsustainable and contrary to law; the petitioner is disputing her signatures on the suit agreement of sale dt.09-07-1996 and the above referred documents, which are in the custody of above three persons, need to be

produced in original so that her signatures thereon can be compared with the signatures purporting to be her signatures on the suit agreement of sale; Order 16 Rule 6 CPC empowers the Court below to grant a relief to the petitioner by directing the above three persons to produce the documents in question; and the view of the Court below that it is not known whether the documents exist or not, cannot be accepted since if the documents in original are not available, the above persons will inform the Court of the said fact.

12. Learned counsel for the respondent on the other hand refuted the above contentions. He contended that in the absence of any material placed by the petitioner to show that the original of the sale deeds referred to above are actually in possession of the persons named by the petitioner, the Court below was right in refusing to exercise its power under Order 16 Rule 6 CPC.

13. Order 16 Rule 6 CPC states:

Order XVI Rule 6 - Summons to produce document:-

Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

14. Therefore the Court does possess the power

to issue summons to a person to produce documents under Order 16 Rule 6 CPC. Of course before doing so, it is required to ascertain the justification for the said document sought to be summoned. The justification for summoning those documents has been set out in the affidavit filed by the petitioner in I.A.No.583 of 2014 i.e. to enable comparison of her admitted signatures on the said document with the signatures purporting to be her signatures on the suit agreement of sale dt.09-07-1996 since she has taken a plea that the said agreement of sale is a forged one. If the originals of the said documents are not available with the persons named above, they would themselves inform the Court below of the said fact. But on the ground that the petitioner has not placed material to show whether the originals exist or not, the Court below cannot refuse to exercise power under Order 16 Rule 6 CPC. The reasoning of the Court below appears to be perverse and the Court below has failed to exercise the jurisdiction vested in it under Order 16 Rule 6 CPC to direct the persons named above to produce the above documents when circumstances warrant the exercise of such jurisdiction. Therefore, order passed by the Court below cannot be sustained.

15. The Civil Revision Petition is allowed. The order
dt.23-02-2015 in I.A.No.583 of 2014 in O.S.No.40 of 2010

of the Principal Junior Civil Judge, Gurazala is set aside and the said I.A. is allowed. No costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-08-2015

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