

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.766 of 2015

ORDER:

This civil revision petition is filed by the petitioner–defendant under Article 227 of Constitution of India assailing the order dated 31.12.2014 passed in I.A. No.190 of 2014 in O.S. No.93 of 2002 on the file of the Principal Junior Civil Judge Court, Peddapuram.

2. The parties to this revision will hereinafter be referred to as they are arrayed before the trial court, to avoid confusion.

3. The averments made in the affidavit filed in support of the petition in I.A. No.190 of 2014 are as follows: The petitioner filed O.S. No.93 of 2002 for perpetual injunction against the respondent. During the course of trial, the respondent produced No.3 adangals for Faslis 1409 to 1415, which were marked as EXs.B10 to B16. The respondent filed petition to receive No.3 adangals for Faslis 1416 to 1419 to mark them in evidence on his behalf. The petitioner contends that the said adangals were prepared in collusion with revenue people. Therefore, the petitioner is constrained to file the petition to summon the Tahsildar, Peddapuram to produce the original No.3 adangals for Faslis 1409 to 1419 and to give evidence.

4. The respondent filed counter denying all the averments made in the petition, *inter alia*, contending that this respondent filed I.A. No.101 of 2012 and I.A.No.103 of 2012 along with certified copies of adangals for Faslis 1416 to 1419 to show that the respondent has been in possession of the property. All the adangals filed by the respondent are certified copies, which were issued by the competent authority. Hence, the petition may be dismissed.

5. No oral or documentary evidence was adduced on behalf of either side. The trial Court, after hearing the learned counsel for both the parties and perusing the material available on record, allowed the petition summoning the Tahsildar, Peddapuram to produce the documents and give evidence as a court witness. Feeling aggrieved by the orders of the trial court, the respondent filed the

revision petition.

6. The contention of learned counsel for the respondent–defendant is three fold:

- (i) the petitioner filed the present I.A. with an intention to drag on the matter and that aspect was not considered by the trial court;
- (ii) in spite of allowing of I.A. No.1015 of 2012, for the self-same relief, the petitioner did not choose to examine the Tahsildar; however the trial court has not considered this aspect; and
- (iii) the second petition for the self-same relief is not maintainable.

Per contra, learned counsel for the petitioner-plaintiff is that mere allowing of previous petition by itself would not debar the petitioner to file the petition seeking same relief. Mere delay in filing of the petition by itself would not be a ground for dismissal of the petition.

7. Basing on the rival contentions, the point that arises for consideration in this revision petition is:

Whether there is any illegality or irregularity in the orders passed by the trial court warranting interference of this court?

Point:

8. To substantiate the argument, learned counsel for the respondent has drawn my attention to the following decisions:

(i) **Boddu Jalaiah v Boddu Panduranga Rao**, wherein it was held as follows:

5. I am unable to accept the contention of the learned Counsel for the petitioner. The petitioner filed application to summon the documents, after the V.A.O.. Somarajupalli was examined as P.W.2 with reference to the documents brought by him. The petitioner did not take any steps in respect of the required documents when VAO was examined and closed the evidence on his side. Even when the evidence of the defendants side closed, no steps were taken in respect of the documents now sought to be summoned. Only when the matter was posted for arguments, the present application is filed. The petitioner having failed to take necessary steps at the appropriate time, it will not be open for him to file such an application at the fag end of the case, that too, when it was posted for arguments. In the circumstances, there is no illegality or irregularity in the impugned order. Accordingly the revision petition is dismissed. No costs.

(ii) **D.Ram Mohan Rao v M/s.Sridevi Hotels Pvt. Ltd.**, wherein it was held as follows:

18. As per Sub-rule (2) of Rule 129 of Civil Rules of Practice, every application for such summons shall be made by an affidavit setting out the document the production of which is required, the relevancy of such document and in cases where the production of a certified copy would answer the purpose, whether such application was made to the proper officer and the result of such application. That apart, Sub-rule (3) also makes it clear that before issuing the summons the Court shall be satisfied that the production of such original document is necessary and shall record its reasons in writing. In the alternative, it has to be established to the satisfaction of the Court that the application for a certified copy has been duly made and has not been granted. The said requirements are also clear from the language of Form No. 23 in which the summons have to be issued by the Court under Sub-rule (1) for production of the records in the custody of a Public Officer.

19. Admittedly, in the case on hand, the defendant failed to take any steps for obtaining the certified copies of the documents in question from the concerned officer. As a matter of fact, his affidavit was totally silent on the said aspect.

The learned counsel for the petitioner has drawn my attention to the following decisions:

(i) **Kolli Ranga Rao v Kolli Varalakshmi Janani**, wherein it was held as follows;

19. The learned Counsel for the Respondent also could not show any provision to file an application to reopen the case. When an application has been filed to adduce further evidence, it is deemed that a request is made to reopen the matter and there is no need to file a separate application to reopen the case.

(ii) **Estralla Rubber v Dass Estate (P) Ltd**, wherein it was held as follows:

6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article [227](#) of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a

grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.

Let me consider the facts of the case on hand in the light of the above legal principles.

9. The petitioner has filed O.S. No.93 of 2002 on the file of Principal Junior Civil Judge Court, Peddapuram seeking perpetual injunction against the respondent in respect of plaint schedule property. After adducing of evidence on both sides, the matter was posted to 11.11.2010 for arguments. It appears that the suit is coming up arguments from 2010 onwards. In order to succeed in a suit for perpetual injunction, the plaintiff has to establish his possession over the plaint schedule property as on the date of filing of the suit. Once the plaintiff discharges the burden cast on him, the onus of proof shifts on defendant to prove the contra. It is an admitted fact that the respondent marked No.3 adangals for Faslis 1409 to 1415 as Exs.B10 to B16 prior to 11.11.2010. It seems that no objection was raised by the petitioner at the time of marking the said adangals. Whatever pleaded by the petitioner in the affidavit, was very much within his knowledge, much prior to 11.11.2010. If the petitioner has grievance, he ought to have objected for marking of the adangals.

10. The learned counsel for the respondent submitted that the petitioner filed I.A. No.1015 of 2012 to summon the Tahsildar, Peddapuram to produce No.3 adangals for Faslis 1409 to 1419. The trial court allowed the said petition on 08.7.2013 with the conditions: (1) the petitioner has to pay costs of Rs.500/- to the respondent; and (2) the petitioner has to deposit approximate copying charges of Rs.300/-. The petitioner was directed to comply the above two conditions on or before 10.7.2010 (*sic*, 10.7.2013) failing which that application shall stand dismissed. The material placed on record clinchingly establishes that the petitioner filed I.A. No.103 of 2012 to receive additional documents i.e., No.3 adangals for Faslis 1416 to 1419 and I.A. No.1015 of 2012 to summon the Tahsildar to produce No.3 adangals for Faslis 1409 to 1419, one after the other,

with an ulterior motive of dragging on the suit proceedings. As observed earlier, the suit is pending for arguments for the last five years. There are no bona fides on the part of the petitioner in filing this type of petitions.

11. The trial court ought to have given a finding with regard to maintainability of the present petition, in view of the failure on the part of the petitioner to examine Tahsildar, who appeared before the trial court, by virtue of order in I.A. No.1015 of 2012. Without giving a finding, even though such contention was raised on behalf of the respondent in his counter, the trial court allowed the present petition, which was filed for the self-same relief as in I.A. No.1015 of 2012. Even otherwise, the trial court has not given any reasons for non-taking of appropriate steps in pursuance of the order in I.A. No.1015 of 2012 by the petitioner, which eventually debars the petitioner to file I.A. No.190 of 2014.

12. Having regard to the facts and circumstances and also the principles enunciated in the cases cited supra, I am of the considered view that the order passed by the trial court is not sustainable either on facts or in law. There are grounds much less valid grounds to interfere with the orders passed by the trial court. Accordingly, the point is answered.

13. In the result, the civil revision petition is allowed, setting aside the order dated 31.12.2014 passed in I.A. No.190 of 2014 in O.S. No.93 of 2002 on the file of the Principal Junior Civil Judge, Peddapuram. Consequently, I.A. No.190 of 2014 is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.10.2015.

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