

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.228 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.191 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.191 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 petitioner filed I.A. No.1015 of 2012 to summon the Tahsildar, Peddapuram to produce No.3 adangals for Faslis 1409 to 1419 and to give evidence. The respondent produced certified copies of No.3 adangals for Faslis 1404 to 1408 issued by the Tahsildar, Peddapuram dated 08.8.2002 and tax receipts alleged to have been issued by the Village Revenue Officer, J.Thimmapuram dated 20.4.2007 were marked as Exs.B18 and B17 respectively. The respondent applied for Pattadar Pass Books before the Revenue Divisional Officer in respect of the suit schedule property and the RDO allowed the said petition though he has no jurisdiction. The petitioner filed revision petition before the District Collector, East Godavari District against the orders in R.Dis.D9/30/2007 and the same was allowed by the District Collector vide orders dated 26.3.2008 by canceling the orders of the RDO. The Tahsildar, Peddapuram has been helping the respondent. The petitioner gave a representation to the District Collector, East Godavari on 30.8.2008, which was numbered as Ref.D9/5196/2008, dated 30.8.2008 to enquire into the matter and take necessary action against the culprits in giving aforesaid documents and also by reminders dated 20.2.2012, 14.7.2012 and 11.6.2012. The District Collector directed the RDO to conduct enquiry and send a report to him vide letters dated 30.8.2008, 03.4.2012, 20.6.2012, 04.9.2012 and 04.12.2013. At

last, the RDO addressed letter dated 21.1.2014 to the Tahsildar, Peddapuram. Hence all the above said facts show that the RDO is helping the respondent. Hence the present petition I.A. No.191 of 2014 is filed to summon the District Collector, East Godavari to produce the petitions given by the petitioner dated 30.8.2008, 20.2.2012, 04.7.2012 and 11.6.2012 regarding the adangals of J.Thimmapuram Village, Peddapuram Mandal regarding the land in S.No.221/2 of an extent of Acs.5.52 cts and the correspondence therein.

4. The respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the respondent's evidence was closed in the year 2010. The petitioner herein cross-examined concerned witnesses with regard to No.3 adangals. The respondent also filed I.A. No.103 of 2012 to receive additional documents i.e., No.3 adangals for Faslis 1416 to 1419 and the same was allowed. The petitioner filed I.A. No.1015 of 2012 to summon the Tahsildar, Peddapuram and produce No.3 adangals for Faslis 1409 to 1419 and the said petition was allowed. Though the Tahsildar was present before the trial court in pursuance of the summons issued, the petitioner did not venture to examine him for the reasons best known to him. On the other hand, the present petitions are filed with an intention to drag on the suit by violating the orders of the Hon'ble High Court of Andhra Pradesh, Hyderabad. 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 District Collector, East Godavari to produce the documents as prayed for. Feeling aggrieved by the orders of the trial court, the respondent filed the revision petition.

6. The contention of learned counsel for the respondent (revision petitioner-defendant) is three fold:

- (i) the petitioner filed the present I.A. with an intention to drag on the matter and that aspect is not considered by the trial court;
- (ii) the petitioner filed I.A. No.1015 of 2012, for producing the documents sought for in the present I.A.; and
- (iii) the second petition for the self-same relief is not maintainable.

Per contra, learned counsel for the petitioner (respondent-plaintiff) submitted 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 revision petitioner 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 respondent herein 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 fact 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 filed the present petition to summon the District Collector, East Godavari District to produce representations dated 30.8.2008, 20.2.2012, 04.7.2012 and 11.6.2012 submitted by the petitioner to the District Collector. The petitioner is very much aware of the complaints lodged by him to the District Collector at the time of recording of his evidence. The petitioner kept quiet for a period of seven (7) years and filed the petition as if he requires representations submitted by him to the District Collector. All these documents are subsequent to filing of the suit. The trial court has not considered relevancy of these documents. The documents, which came into existence subsequent to filing of the suit, have no relevancy more particularly to decide "*who was in possession of the suit schedule property as on the date of filing of the suit*".

10. The Collector being head of the District is pre-occupied with number of administrative as well as quasi-judicial functions. The District Collector may receive thousands of representations and applications from general public and he will transmit the same to the concerned department to take appropriate steps. If the court issues summons asking the District Collector to produce the representations received by him in respect of different wings of the District, under his control, he may not find time even to attend different courts, thereby entire administration of the District may stall. While passing orders in this type of petitions, courts should ascertain the intention of the parties to the proceedings.

11. A perusal of the material available on record clearly reveals that the intention of the petitioner is to know whether the District Collector has taken any action against the RDO and the Tahsildar basing on his representations. Except for that purpose, the representations said to have been lodged by the petitioner with the District Collector have nothing to do with the subject matter of the suit. In order to grant the relief sought by the petitioner, the court has to consider *whether the petitioner was in possession of the property as on the*

date of filing of the suit or not. The documents called for are no way helpful to the court to adjudicate the dispute involved in the suit. The trial court allowed the petition on the sole ground that the documents sought for by the petitioner are public documents, which may help to decide the controversy. No doubt the court can issue summons to the concerned officials if the exigencies so warrant and to put it in a different way, the presence of such an official is indispensable for dispensation of justice.

12. Simply because the parties file the petition with a request to summon the officials, by itself is not a sufficient ground to order such petitions more particularly the District Collector, for an irrelevant and trivial issues. No.3 adangals would be under the custody of the Village Revenue Officer concerned, who works under the direct control of the Tahsildar. Viewed from any angle, the order of the trial court, issuing summons to the District Collector, East Godavari directing him to produce the representations given by the petitioner is not at all sustainable.

13. At the time of arguments, learned counsel for the respondent submitted that in pursuance of the summons issued by the trial court, the RDO personally appeared before the trial Court and produced representations submitted by the petitioner to the District Collector. The respondent also produced copy of the deposition of the RDO. A perusal of the deposition clearly reveals that on 10.8.2015, the RDO personally present and produced the documents sought for before the trial court.

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.191 of 2014 in O.S. No.93 of 2002 on the file of the Principal Junior Civil Judge, Peddapuram. Consequently, I.A. No.191 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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