

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

**CRP.Nos.1045 of 2015, 1046 of 2015, 1128 of 2015,
1801 of 2014 and 92 of 2015**

COMMON ORDER :

Since these Revisions arise between the same parties out of the same suit, they are being disposed of by this common order.

CRP.Nos. 1801 of 2014 and 92 of 2015:

2. CRP.No.1801 of 2014 is filed under Article 227 of the Constitution of India challenging the order dt.15.04.2014 in I.A.No.137 of 2014 in O.S.No.310 of 2011 on the file of I Additional Junior Civil Judge, Tirupathi; and CRP.No.92 of 2015 is filed under Article 227 of the Constitution of India challenging the order dt.11.11.2014 in I.A.No.631 of 2014 in O.S.No.310 of 2011 on the file of I Additional Junior Civil Judge, Tirupathi.

3. The petitioners in CRP.Nos.1801 of 2014 and 92 of 2015 are defendant nos.1 and 2 in the above suit.

4. The said suit was filed by plaintiffs seeking a perpetual injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the plaint schedule property.

5. Written statement was filed by defendant opposing the suit claim.

6. Issues were framed. Trial commenced.

7. Initially, defendant nos.1 and 2 filed I.A.No.137 of 2014 to summon the Mandal Development Officer, Renigunta Mandal for the purpose of giving evidence on their behalf with regard to sanction of a loan to them to sow mango saplings in Sy.No.116/2 of Karakambadi Village accounts and the Field Assistant and other staff inspecting the said land and supplying 175 Mango saplings to plant in the said land. They contended that the plantation raised was under the Mahatma Gandhi National Rural Employment Guarantee Scheme for the year 2011-12. They also filed I.A.No.631 of 2014 to summon the Tahsildar, Renigunta to give evidence with regard to survey, sub-division, if any, and other facts relating to the suit survey number land. In these applications, it was contended that this evidence is crucial to establish their case.

8. The plaintiffs contended that in the written statement the defendants had alleged that in the entire extent of Acs.1.41 cents they had sowed *jowar* and *corn* crop and the plea now raised by them that they have raised a mango plantation is contrary to the said pleading.

9. By order dt.15.04.2014, the Court below dismissed I.A.No.137 of 2014. It held that the defendants can as well produce certified copies of the documents from the concerned authorities to prove their possession and there is no necessity to summon the Mandal

Development Officer, Renigunta Mandal for this purpose. It further relied on Rule 129 (3) of Civil Rules of Practice (which mentions that no court shall issue such summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted). It therefore held that the defendants can file the documents in support of their claim that they are in possession of the plaint schedule property by applying before *Mee Seva* or under the Right to Information Act, 2005.

10. In I.A.No.631 of 2014, the defendants contended that they had filed written statement along with No.3 Adangals issued by the Village Administrative Officer, Karakambadi Group Renigunta Mandal, Chittoor District dt.24.08.1993, 12.08.1996 and 11.03.1998, but they could not mark them through DW.1 or the 2nd defendant, and therefore, the Tahsildar, Renigunta is to be summoned to give evidence with regard to survey, sub-division and other facts relating to the survey number in which the suit land is situated.

11. Counter-affidavit was filed by plaintiffs contending that earlier I.A.No.137 of 2014 was filed by the defendants to re-open the suit for adducing further evidence and it was dismissed on merits on 11.04.2014 and the present affidavit is a replica of the affidavit in I.A.No.137 of 2014. They also contended that No.3 Adangals issued by the Village Administrative Officer are not admissible in

evidence and if they are interested, the defendants can summon documents from Tahsildar's Office. They also contended that the suit is itself posted for arguments on several occasions and the defendants are in the habit of filing these applications without any basis.

12. By order dt.11.11.2014, the Court below dismissed I.A.No.631 of 2014. It held that the defendants can obtain documents from the concerned authorities in the form of certified copies in order to prove their case and also from *Mee Seva* counters, maintained and controlled by the Government of Andhra Pradesh, that there is no necessity to summon the Mandal Surveyor or the Tahsildar to produce documents to give evidence and that the application is filed only to drag on the proceedings.

13. Challenging the order in I.A.No.137 of 2014 in O.S.No.310 of 2011, CRP.No.1801 of 2014 was filed by petitioners; and challenging the order in I.A.No.631 of 2014 in O.S.No.310 of 2014, CRP.No.92 of 2015 was filed by petitioners.

14. Although the counsel for petitioners contended that the orders passed in these two Revisions are erroneous and unsustainable, I am of the opinion that the reasoning given by the Court below that officials concerned need not be summoned and the documents which the defendants seek to rely to prove their possession can be secured by them either from the concerned authorities in the form of certified copies or

from *Mee Seva* counters, maintained and controlled by the Government and there is no necessity to summon either the Mandal Development Officer or the Tahsildar, Renigunta Mandal or the Mandal Surveyor, for that purpose.

15. It is not the case of defendants that they had approached the said authorities, and the latter had refused to furnish the material sought by defendants.

16. Therefore, I do not find any merit in CRP.No.1801 of 2014 and CRP.No.92 of 2015, and the same are accordingly dismissed.

CRP.Nos.1045 of 2015; 1046 of 2015 and 1128 of 2015 :

17. CRP.No.1045 of 2015 is filed under Article 227 of the Constitution of India challenging the order dt.29.12.2014 in I.A.No.779 of 2014 in O.S.No.310 of 2011 on the file of I Additional Junior Civil Judge, Tirupati; CRP.No.1046 of 2015 is filed under Article 227 of the Constitution of India challenging the order dt.29.12.2014 in I.A.No.781 of 2014 in O.S.No.310 of 2011 on the file of I Additional Junior Civil Judge, Tirupati; and CRP.No.1128 of 2015 is filed under Article 227 of the Constitution of India challenging the order dt.29.12.2014 in I.A.No.780 of 2014 in O.S.No.310 of 2011 on the file of I Additional Junior Civil Judge, Tirupati. The petitioners in these Revisions are plaintiff nos.2 to 6 in the said suit.

18. The defendants had filed I.A.No.779 of 2014 under

Section 151 C.P.C. to re-open the suit for the purpose of re-calling DW.2 and marking of certain documents.

19. They also filed I.A.No.780 of 2014 under Order 18 Rule 17 CPC to re-call DW.2 for the purpose of marking documents relating to their cultivation/raising of mango plantation in the subject land, alleging that the Tahsildar, Renigunta Mandal had served copy of the Adangals and fair Adangals to 2nd defendant's counsel on 12.10.2011, but the same was not produced by oversight at the time of giving evidence. The said application was filed on 02.01.2014, more than two years after receipt of the said documents by the counsel for 2nd defendant.

20. The petitioners also filed I.A.No.781 of 2014 under Order VIII Rule 1A (3) CPC to receive : (a) Five positive photographs with compact disc; (b) Served copy of application issued by the Mandal Parishad Development Officer, Renigunta to the 2nd defendant; and (c) served copy of Adangal and fair adangal obtained through Right to Information Act, 2005 issued by the P.I.O – cum – Tahsildar, Renigunta Mandal, Chittoor District.

21. The above three applications were opposed by the plaintiffs contending that the delay in filing these documents is not satisfactorily explained, and therefore, there is no necessity to re-open the suit and re-call DW.2 for the purpose of marking these documents or for receiving these documents at the stage of hearing the arguments.

22. By separate orders dt.29.12.2014, the Court below allowed these three applications. It held that the defendant had filed two applications previously to summon the Mandal Development Officer and Tahsildar, Renigunta to produce and adduce evidence, which were dismissed on merits; the suit is at the stage of hearing arguments; yet opportunity can be given to defendants to file these documents at this stage and to cross-examine DW.2 with regard to the documents sought to be filed; and it would help in the proper adjudication of the suit on merits.

23. Challenging these orders, the plaintiff nos.2 to 6 filed CRP.Nos.1045 of 2015, 1046 of 2015 and 1128 of 2015.

24. The counsel for petitioners contended that the Adangals and fair Adangals had been obtained by defendants' counsel on 12.10.2011 itself; except stating that their failure to file these documents earlier was neither willful nor wanton, no explanation is given by the defendants why they were not filed earlier; and therefore, the court below ought not to have permitted receipt of these documents along with the photographs and the application issued by the Mandal Parishad Development Officer, Renigunta to 2nd defendant, and directed re-call of DW.2 after re-opening the suit which was at the stage of arguments. He also placed reliance on the judgment of

the Supreme Court in **Bagai Construction, through its proprietor Lalit Bagai v. Gupta Building Material Store**^[1].

25. The counsel for respondents/defendants in these Revisions however contended that the orders passed by the Court below are discretionary in nature and in exercise of jurisdiction under Article 227 of the Constitution of India, it is not necessary to interfere with the same since no prejudice would be caused to petitioners/plaintiffs if the I.A.s are allowed.

26. Admittedly, the suit is at the stage of arguments and at that stage, these applications have been filed by defendants to re-open the evidence, re-call DW.2 and to receive the three named documents, mentioned above. It is not disputed that defendants had earlier filed I.A.s to summon the Mandal Development Officer and the Tahsildar to produce and adduce evidence in IA.Nos.137 of 2014 and 631 of 2014 and the same had been rejected on 15.04.2014 and 11.11.2014 respectively, and the orders therein are confirmed by dismissal of CRP.Nos.1801 of 2014 and 92 of 2015 filed thereagainst.

27. The three documents which are now sought to be filed are set out above. In the affidavit filed in support of I.A.No.781 of 2014, no explanation is furnished by defendants as to why they could not be produced at the time when defendants were giving evidence. One of these documents sought to be filed was actually

admittedly furnished to the defendants' counsel on 12.10.2011 and yet the application to receive these documents has been filed more than two years later. In the absence of any explanation given by defendants for filing these documents at a late stage, they are not entitled to grant of leave under Order 8 Rule 1A (3) C.P.C.

28. In **Bagai Construction** (1 supra), the Supreme Court interpreted Order 18 Rule 17 C.P.C. to include applications to be filed by the parties for re-call of witnesses, but held that the main purpose of the said rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties and that this provision is not intended to be used to fill up omissions in the evidence of a witness who had already been examined. The court held that the power under this provision has to be sparingly exercised and in appropriate cases and not as a general rule. Therefore, the defendants are not entitled to re-call DW.2 as a matter of right.

29. It is to mark these documents that the defendants had sought to re-call DW.2 by filing I.A.No.780 of 2014 and to re-open the suit in I.A.No.779 of 2014. Once the documents are held to be not receivable in evidence, there is no necessity to re-open the suit or to re-call DW.2.

30. Therefore, the Court below, in my considered opinion, erred in allowing I.A.No.779 of 2014, I.A.No.780

of 2014 and I.A.No.781 of 2014. So, the orders passed therein are set aside and the Civil Revision Petition Nos.1045 of 2015, 1128 of 2015 and 1046 of 2015 are allowed.

31. In the result, CRP.No.1801 of 2014 and CRP.No.92 of 2015, are dismissed; and CRP. Nos.1045 of 2015, 1128 of 2015 and 1046 of 2015 are allowed. No order as to costs.

32. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-08-2015

Ndr/*

[\[1\]](#) (2013) 14 SCC 1