

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.651 of 2015

ORDER:

The order under revision is the order passed in I.A.No.2 of 2013 in O.S.No.8 of 2006 dated 26.09.2014 by the learned II Additional District Judge, Madanapalle, FAC VII Additional District Judge, Madanapalle, Chittoor District.

The aforesaid I.A. was filed by defendants 8 and 9 in the Suit (petitioners herein) requesting the Court below to appoint a Court Commissioner to record the evidence of a Notary at Bangalore to prove their case. The petitioners' case before the Court below was that the vendor of the 9th defendant and the plaintiffs had handed over an affidavit, which was marked as Ex.B14, duly attested by a Notary at Bangalore at the time of execution of Exs.B12 and B13; the respondents-plaintiffs had denied execution of Exs.B14; in order to prove Ex.B14, examination of the Notary was important; the Notary was busy with his profession; and he was unable to come to the Court to give evidence. In their counter-affidavit, the respondents-plaintiffs contended that defendants 1 to 3, 8 and 9 had colluded with each other, and had created Ex.B14 with the help of the notary; and, as they were denying execution of Ex.B.14, it was necessary that the Notary be examined before the Court, instead of examination on commission.

The Court below held that, when Ex.B14 was denied by the respondents-plaintiffs in the suit, the Notary should be examined before the Court and not on Commission; the contention that the Notary was busy with his profession was not convincing; the services of Notary did not come under the purview of exempted category or emergency services like public servants; his services to the needy public depended on necessity or requirement of the public; the Notary, having agreed to serve the public to notarize the documents, was bound to appear before the Court to give evidence like any other witness; and, therefore, the petitioners-defendants could not be permitted to record the evidence, of

the Notary at Bangalore, on commission.

Sri Mahadeva Kanthrigala, Learned Counsel for the petitioners-defendants, relies on a judgment of this Court in **T.Syed Basha v. APSRTC**^[1], in support of his submission that the Notary should be examined on commission. In **T.Syed Basha**¹, this Court held that, under Order 26 CPC, it was permissible to appoint a Commissioner to examine a witness even if he resided beyond the local limits of the jurisdiction of the Court; recording the evidence of a witness, who resided beyond 500 K.Ms. from the place of the Court, should be through commission; for examination of a witness, who resided within the territorial jurisdiction of the Court, or outside its jurisdiction but within 100 K.Ms. or at a place less than 500 K.Ms. from the place of the Court and it is connected by rail or public transport, it is permissible for any Court to appoint a commissioner; the inherent restrictions placed upon the Courts, in the matter of appointment of commissions to examine witnesses, have been relaxed in view of Order 26 Rule 4-A CPC; and, as the witness therein was a doctor, his evidence should be recorded by a Commissioner.

Order 26 Rule 4(1) enables a Court to issue a commission for examination of a person, on interrogatories or otherwise, residing beyond the local limits of its jurisdiction; a person who is about to leave such limits before the date on which he is required to be examined in Court; and any person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to public service. Under Rule 4-A of Order 26 CPC, the Court is empowered, in the interest of justice or for the expeditious disposal of the case or for any other reason, to issue commission in any suit for the examination, on interrogatories or otherwise, of any person residing within the local limits of its jurisdiction.

In the present case, the petitioners sought examination of the Notary, at Bangalore, by way of commission. A notary does not fall within the ambit of clause [c] of Order 26 Rule 4(1) as he is not a government servant. The Court below has, in the exercise of its discretion, come to the conclusion that examination of the notary before

the Court was necessary as the respondents-plaintiffs had contended that they did not execute B-14; and had alleged that the petitioners-defendants, in collusion with the notary, had created Ex.B14.

The order of the Court below does not suffer from patent illegality warranting interference in proceedings under Article 227 of the Constitution of India. The Court below, in its discretion and for just and valid reasons, has come to the conclusion that the Notary must be examined before the Court as the respondents-plaintiffs had contended that Ex.B14 was a created document, and they had denied execution thereof. The petitioners-defendants have also not shown how they would suffer substantial injustice if the Notary is examined before the Court, and not on commission. I see no reason, therefore, to exercise jurisdiction under Article 227 of the Constitution of India to interfere with the discretion exercised by the Court below in rejecting the petitioners request for examination of the Notary, on commission, at Bangalore.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous petitions pending, if any, shall also stand dismissed. No order as to costs.

(RAMESH RANGANATHAN, J)

Date:27.02.2015.

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[\[1\]](#) 2006 (4) ALT 3 = 2006 (4) ALD 292