

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.449 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India, challenging the order dt.22.09.2014 in I.A.No.59 of 2013 in O.S.No.3 of 2007 of the Judge, Family Court – cum – IV Additional District and Sessions Judge, Adilabad.

2. The petitioners herein are defendants in the suit.
3. The respondent nos.1 to 3 filed the above suit for declaration of their title and for cancellation of a judgment in O.S.No.9 of 1992 on the file of Senior Civil Judge, Asifabad, for a perpetual injunction; and for costs.
4. The petitioners filed a written statement opposing the suit claim.
5. Issues were framed. Trial commenced and the evidence on the side of plaintiff was closed. The suit was coming up for evidence of petitioners, and DW.1 was also examined and he marked certain documents.
6. At that stage, the petitioners filed I.A.No.59 of 2013 through their counsel contending that a certificate dt.22.08.1970 in File No. B-5/235/68 issued under Section 50-B of the Andhra Pradesh (Telangana Area)

Tenancy and Agricultural Lands Act, 1950 [for short, 'the Act'] (filed in O.S.No.9 of 1992 before the Senior Civil Judge, Luxettipet), pertaining to the suit land bearing Survey No.367 of Ponkal Village of Mandal Jannaram, Adilabad District), be summoned from the said court. They alleged that the Revenue officials have not given them certified copy thereof on the ground that the files available with them did not contain the said certificate, and even though they filed an application in O.S.No.9 of 1992 for return of the said document, no order has been passed thereon, and the said application has been kept pending. They contended that since the said document is available in the custody of the Senior Civil Judge, Luxettipet, in exercise of the power under Order 13 Rule 10 C.P.C., the court below can summon the said document from the custody of the said court. It was further stated that, if for any reason the affidavit of party is necessary, the same will be filed after getting the same signed and attested by the concerned defendants; and till then, the affidavit of the counsel for defendants/petitioners might be taken into consideration. It was also stated that the suit O.S.No.9 of 1992 has since been transferred to the Additional Senior Civil Judge, (F.T.C.), at Luxettipet.

7. This application was opposed by respondents who contended that no material is placed before the Court below that the Revenue officials had refused to issue

such certificate, and there is no evidence filed to show that any application was moved by petitioners before the court where O.S.No.9 of 1992 was pending for return of the said document. They also contended that the certificate in question is a concocted document, and that the application is filed only with an intention to drag on the suit.

8. By order dt.22.09.2014, the Court below rejected the said application. It held that petitioners had failed to mention the interlocutory application number in which they sought to take return of the said document from the court of the Senior Civil Judge, Luxettipet; and no document is filed to show that they even filed an application for return of the said document before the said Court, or that the Revenue Divisional Officer refused to issue certified copy thereof. It was further observed that the said document sought for to be summoned from record in O.S.No.9 of 1992 is only an unmarked document and no court would raise an objection to return it to the parties.

9. Challenging the same, the present Revision is filed.

10. The counsel for petitioner contended that under Order 13 Rule 10 C.P.C., the Court may either *suo moto* or on an application by any of the parties to the suit, send for records from any other court and inspect the same; and the petitioner had also filed an affidavit indicating the

efforts made by him to get the certified copy of the Section 50-B certificate from the Tahsildar and also from the Court where O.S.No.9 of 1992 is pending; and the Court below ought to have therefore exercised its power under Order 13 Rule 10 and summoned the said document from the Court having custody of the records in O.S.No.9 of 1992.

11. On the other hand, the counsel for respondents supported the order passed by the Trial Court and contended that there is no error in the order passed by the trial court warranting exercise of jurisdiction by this Court under Article 227 of the Constitution of India. He reiterated the grounds raised by respondents in the Court below.

12. Order 13 Rule 10 C.P.C. states :

“10. Court may send for papers from its own records or from other Courts.—

(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.”

13. The above provision of law has been interpreted by the Supreme Court in **Lakshmi and another v. Chinnammal *alias* Rayyammal and others**^[1]. The Supreme Court in that case held that if bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused since it is the court's duty to find out the truth.

14. According to petitioners it is important for them that the certified copy of the said certificate issued under Section 50-B of the Act be marked in evidence in support of their plea and the said document is available in O.S.No.9 of 1992 which was earlier filed before the Senior Civil Judge, Luxettipet which is now said to have been transferred to the Additional Senior Civil Judge, (F.T.C.) Luxettipet.

15. The petitioners herein have filed an affidavit of their counsel explaining their inability to get the said document from the Revenue authorities and also stating that their efforts to get the said document from the court where O.S.No.9 of 1992 was pending did not fructify. There is no reason for the Court below to doubt these efforts.

16. In this view of the matter and having regard to the decision of the Supreme Court mentioned above, I am of the opinion that the Court below erred in rejecting

I.A.No.59 of 2013 in O.S.No.3 of 2007 on hyper-technical grounds. The said order therefore cannot be sustained.

17. Therefore, the Civil Revision Petition is allowed and the order dt.22.09.2014 in I.A.No.59 of 2013 in O.S.No.3 of 2007 on the file of Judge, Family Court – cum – IV Additional District and Sessions Judge, Adilabad is set aside; the said I.A. is allowed and the court below is directed to send for the certified copy of the certificate dt.22.08.1970 in File No.B-5/235/68 issued under Section 50-B of the Act pertaining to the suit land bearing Survey No.367 of Ponkal Village of Mandal Jannaram, Adilabad District from O.S.No.9 of 1992 on the file of Additional Senior Civil Judge, (F.T.C.), at Luxettipet. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.08.2015

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^[1] 2009 (3) ALT 46 SC