

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2776 of 2012

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.27.03.2012 in I.A.No.225 of 2012 in O.S.No.22 of 2009 on the file of II Additional Senior Civil Judge, Nandyal.

2. The petitioner herein is the plaintiff in the above suit.

3. He filed the above suit for specific performance of an agreement of sale dt.06.09.1994 against the 1st respondent and other respondents. He was examined as PW.1. He intended to examine the scribe of the said agreement of sale as PW.2, but he came to know that the scribe died on 22.04.2003.

4. So he filed I.A.No.225 of 2012 under Order 16 Rule 1 C.P.C., praying the Court below to issue summons to the son of the scribe mentioned in the petition, so that he may be examined as PW.2.

5. This application was opposed by respondents contending that nowhere did PW.1 mention who the scribe of the agreement of sale dt.06.09.1994 was, and now, for the first time, in the affidavit filed in support of I.A.No.225 of 2012, he stated that the scribe died on

22.04.2003, and so he cannot be permitted to examine on summons the person named by him in I.A.No.225 of 2012, as if he is the son of the scribe. It was also contended that no petition was filed to summon the proposed witness on behalf of petitioner, and without filing such a petition, a petition to hand over the summons cannot be maintained; and that the affidavit in lieu of chief-examination of PW.2 at least should have been filed.

6. By order dt.27.03.2012, the Court below dismissed the said application. It referred to the contentions of both sides and held that without filing a petition to summon witness, the petitioner had sought for handing over summons to the witness.

7. A look at the prayer in I.A.No.225 of 2012 indicates that the petitioner wanted the Court to issue and hand over the summons to the witness. Therefore, the Court below is not correct in stating that there should be a separate petition to summon the witness, and that the petitioner had only sought relief to hand over summons to the witness without filing a petition to summon the witness. The prayer in the said I.A. to “issue” summons has to be treated as prayer to “summon” witness. The reasoning of the Court below is therefore not correct.

8. It is further held by the Court below that there is no reason for not filing chief-affidavit of the proposed witness as PW.2. Since this reason is not acceptable since if the

person named in I.A.No.225 of 2012 had agreed to co-operate with petitioner, there was no necessity for petitioner to seek issuance of summons to him to give evidence.

9. The Court below further held that the identity and particulars of the scribe of the agreement of sale were not disclosed by petitioner. Admittedly, the agreement of sale is marked as Ex.A.2 in the suit. The scribe's name would be mentioned in it. Therefore, it cannot be said that petitioner had suppressed the identity and particulars of the scribe. Therefore, even this reasoning, given by the Court below, cannot be accepted.

10. Although the counsel for respondents sought to contend that identity of the witness mentioned in I.A.No.225 of 2012 is clear, but the petitioner should first establish that the said witness is related to the scribe, and only then can summons be issued. In my considered opinion, the respondents would have ample opportunity to cross-examine the said witness as to his alleged relationship with the deceased scribe. If they are able to establish that he is not related to the scribe, his evidence will not be taken into account. Therefore, no prejudice is caused to respondents in this regard.

11. As regards the contention of the counsel for respondents that there is no application filed seeking

summons for attendance of the proposed witness along with the plaint is concerned, sub-Rule (3) of Order 16 Rule 1 CPC gives ample powers to the Court to issue summons to a witness who is not mentioned in the list which is supposed to be filed earlier, provided sufficient cause is shown.

12. In the facts and circumstances of the case, I am of the opinion that petitioner had shown sufficient cause for not mentioning the name of the proposed witness prior to the commencement of the trial.

13. In this view of the matter, the order dt.27.03.2012 in I.A.No.225 of 2012 in O.S.No.22 of 2009 on the file of II Additional Senior Civil Judge, Nandyal is set aside; and the said I.A. is allowed.

14. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

15. Since the suit is of the year 2009, the Court below is directed to expeditiously dispose it of preferably within a period of six (06) months from the date of receipt of a copy of this order.

16. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03.09.2015

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