

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3503 of 2015

ORDER:

Petitioner is the defendant in O.S. No.28 of 2013 filed by the respondent herein on the file of the II Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, for perpetual injunction. In the said suit, the respondent herein filed I.A. No.489 of 2015 for issuance of summons to RDO, VRO, MEO and Surveyor of Saroornagar Mandal, Ranga Reddy District, for deposing as witnesses. The respondent therein, who is petitioner herein, filed a counter opposing the said application. The application in I.A. No.489 of 2015 was dismissed on 03.07.2015 holding as follows:

"The petition of the petitioner is completely vague and not supported by any documentary evidence and he has not given any particulars as to on which date and time the so called officials has visited the suit schedule property. Without producing any such documents in support their case, the petitioner is directly seeking to summon the officials. It is not the case of the petitioner that the reports issued by the said official is not with him or that they have applied for certified copies of the same and inspite of that, the petitioner was not able to secure the same. Rule 129 of Civil Rules of Practice provides procedure for summoning for the production of records from the public officer other than the court. As per Rule 129 the person who is seeking for summoning the document shall file an application for certified copies of the documents which sought to be summoned and the said application has not been granted. The originals can be summoned from the competent public officer or other authorities if purpose of certified copies is not served. Here in the instance case, the petitioner is seeking to summon the RDO, VRO, MEO and Surveyor of Saroornagar Mandal, Rangareddy District to produce documents and to give evidence. The petitioner has not filed any document to show that he had filed an application for certified copies and the same has not been granted and without following procedure laid down under Rule 129 (3) no court shall issue summons

for summoning the public officer to produce documents and to give evidence on those documents. In the instance case, also, the petitioner has not made any efforts to follow said procedure as laid down in Rule 129 of Civil Rules of Practice. Therefore, I see no merits in the petition. Hence, the petition is liable to be dismissed."

2. Thereafter, the respondent herein filed I.A. No.566 of 2015 under Section 152 of the Code of Civil Procedure, 1908 (for short, 'CPC') seeking the Court to review the orders passed in I.A. No.489 of 2015 dated 03.07.2015 and issue summons to the persons named in I.A. No.489 of 2015. In support of the said application, it is stated as follows:

"In fact, the Petitioner/ Plaintiff filed the documents and the same have marked as exhibit A 1 to Ex;A11 during the chief examination through PW No.1. Whereas the Petitioner/Plaintiff marked the document duly issued by the Government of Andhrapradesh, Revenue Department vide No.E4/950/2013 dated 20-07-2013 and the same is marked as Ex A8. Wherein, in the said document, it is clearly stated in page No.12 that, the DC & Tahasildar, Saroornagar Mandal has been enquired into the matter and reported that on verification of the relevant records and local enquiry that the land bearing Sy.No;66 is classified as 'Sakari' as per khasra pahani for the year 1953-54. But the Hon'ble court while dismissing the said IA held that, the Petitioner/Plaintiff did not filed any document in support of the contention that the government has conducted the survey and the concerned MRO conducted the enquiry. Though the Petitioner/ Plaintiff filed the entire record issued by the revenue department in support of his contention but unfortunately the Hon'ble court dismissed the petition without considering the said fact of the filing such document and the same was marked as ex A8. As such it is just and necessary review the said orders and summon the concerned officials to depose their evidence for proper and just adjudication of the matter in the interest of justice."

3. The petitioner herein filed counter stating that the application cannot be filed under Section 152 CPC, when the respondent herein is seeking review of the earlier order as Section 152

CPC applies only to the correction of clerical or arithmetical mistakes. It was also stated that the appropriate application has to be filed under Section 114 CPC.

4. The lower court allowed the application in I.A. No.566 of 2015 and held as follows:

"This court after going through the averments made in the said petition dismissed the petition on the ground that there are no documents in support of their contention thereof. But, on perusal of the record, as rightly contended by the learned counsel for the petitioner, there are documents available on record that the government has conducted survey and concerned MRO conducted enquiry and Ex.A8 shows that the DC & Tahasildar, Sarroornagar Mandal had enquired into the matter and due to oversight this court dismissed the petition without looking into the documents that are filed in support of their contention. Hence, in the said circumstances, it is a fit case to review the orders in I.A.No.489/2015 and allow the petition.

No doubt true, as rightly contended by the learned counsel for the respondent, the present petition is filed by the petitioner seeking a review of the orders passed in I.a.No.489/2015 under Section 152 of C.P.C. and Section 152 of C.P.C. deals with the amendment of clerical or arithmetical mistakes in judgments, decrees or orders arising therein from any accidental slip or omission, but, it is a settled law that the petition cannot be dismissed on the sole ground of wrong coding of the provision of law. As observed supra, the error is apparent on the fact of the record and for the mistake of the court, the petitioner cannot be made to suffer. As already noticed, the petitioner has shown sufficient cause for summoning the proposed witness. Summoning of the proposed witnesses in my opinion would not result in any prejudice or loss to the respondent and on the other hand, refusal to summon the proposed witnesses may amount to denial of the opportunity to the petitioner to produce the evidence available in support of their case and that may result in great loss and injury to them.

In the circumstances, the petition is allowed, reviewing the orders in I.A.No.489/2015 and the proposed witnesses i.e., RDO, VRO and Surveyor of Sarroornagar Mandal, Ranga Reddy District are ordered to be summoned to give evidence as witnesses of the petitioner. The petitioner shall pay Rs.300/- each (Rupees Three Hundred Only) towards

expenses of the proposed witnesses directly. No costs."

5. A perusal of the earlier order passed in I.A. No.489 of 2015 with the impugned order shows that the lower court has not given any finding with regard to the observations made in the earlier order relating to Rule 129 of the Civil Rules of Practice. Even assuming that the quoting of wrong provision is not material for reviewing the order, the finding recorded that the earlier order was passed due to oversight is also not correct.

6. In the circumstances, the impugned order dated 31.07.2015 passed by the lower court in I.A. No.566 of 2015 is set aside and the matter is remanded to the II Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, for passing appropriate orders in accordance with law after hearing both the counsels.

7. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any pending in this civil revision petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 29.12.2015

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