THE HON'BLE SRI JUSTICE A.V. SESHA SAI

CIVIL REVISION PETITION Nos.2735, 4443 & 4458 of 2016

COMMON ORDER:

Since these Civil Revision Petitions arise out of one case, this Court deems it appropriate to dispose of these revisions by way of this common order.

Heard Sri A. Sameer Kumar, learned counsel for the petitioner and Sri N. Ranga Reddy, learned counsel for the 1st respondent.

The 1st respondent in O.P.No.1 of 2014 on the file of the Election Tribunal in respect of Gram Panchayat, Mandal Parishads, Zilla Parishads Rules, 1995 (Junior Civil Judge, Hindupur) is the petitioner in these Civil Revision Petitions, filed under Article 227 of the Constitution of India.

The 1st respondent herein filed the said O.P.No.1 of 2014 under Section 223 of A.P. Gram Panchayat Raj Act, 1994 for a declaration that the election of the petitioner herein as Sarpanch of Beechiganipally Gram Panchayat is illegal and invalid and for consequential declaration to declare him elected as Sarpanch of Gram Panchayat.

In the said O.P.1 of 2014 when the matter was coming up for further evidence of respondents 2 to 4, the election petitioner/1st respondent herein filed three Interlocutory

Applications namely I.A.Nos.1, 2 and 3 of 2016 under Section 151, under Order XVIII Rule 17 and under Order VII Rule 14 of Code of Civil Procedure, praying to reopen the evidence, to recall PW3 for marking of documents and to receive the documents respectively.

The petitioner/1st respondent in O.P.No.1 of 2014 filed counter-affidavit, opposing the said applications.

The learned Junior Civil Judge, Hindupur by way of common order, dated 21-04-2016 allowed the said applications. The said common order passed by the learned Judge is under challenge in the present revisions.

It is contended by learned counsel for the petitioner that the common order under challenge is erroneous, contrary to law and opposed to the very spirit and object of provisions of Order XVIII Rule 17 and Order VII Rule 14(3) of Code of Civil Procedure. It is further submitted by learned counsel that without assigning any valid reasons in the supporting affidavit the 1st respondent herein sought reopening and permission to file the documents, as such, the learned Judge ought to have dismissed the applications on the said ground alone.

On the contrary, it is contended strenuously by the learned counsel for the 1st respondent/election petitioner that

there is absolutely no illegality nor there exists any infirmity in the impugned order, as such, the questioned common order is not amenable for any correction, by this Court under Article 227 of the Constitution of India.

In the above background, now the issue that calls for consideration of this Court is:

> *Whether the common order passed by the Court below is sustainable and tenable and whether the same is, in accordance with law?*

There is absolutely no dispute on the reality that after closure of the evidence on petitioner's side and when the matter was coming up for further evidence of respondents in O.P., the present applications were filed in the Court below.

In the affidavit filed in support of the interlocutory applications it is stated that the election petitioner examined one Sri T. Lakshmi Reddy as PW-3 and at the time of his examination he did not obtain the copy of Tubectomy details certificate of Smt.P. Jayalakshmi, wife of respondent No.1 in O.P. under Right to Information Act. It is further stated that now PW3 received the Tubectomy details from D.M.H.O., Anantapur and the said Tubectomy details are very much necessary to prove the case of the election petitioner.

According to Rule 14 (1) of Order VII of Code of Civil Procedure, it is obligatory on the part of the plaintiff to enclose the documents along with the plaint. Rule 14 (3) of Order VII of Code of Civil Procedure is a departure to the said Rule which stipulates that when a document which ought to be produced in Court by plaintiff when the plaint is presented is not produced along with plaint, the same shall not be received in evidence at the hearing of the suit without leave of the Court.

The said provision of law imposes obligation on the election petitioner to assign valid and proper reasons for not filing the documents along with O.P. at the time of presentation.

In the instant case, the reason assigned is that at the time of examination PW3 did not obtain the copy of Tubectomy details certificate and now he received the same. The same is not a valid ground for reopening the case for the purpose of marking documents and in the considered opinion of this Court the same is opposed to the very spirit of Order VII Rule 14(3) of Code of Civil Procedure.

A perusal of the common order under challenge clearly shows that learned counsel for the 1st respondent in Interlocutory Applications specifically argued that PW3 is not

a party to the petition and has no right to obtain Tubectomy details certificate of Smt.P. Jayalakshmi.

The reason assigned by the Court below is that there are no tenable grounds to dismiss the petitions. In fact, the Court below ought to have considered the object and intention behind Order VII Rule 14(3) of Code of Civil Procedure.

In view of these reasons, in the considered opinion of this Court the common order passed by the Court below is not sustainable and tenable in the eye of law.

For the aforesaid reasons, the Civil Revision Petitions are allowed, setting aside the common order, dated 21-04-2016 passed by the Junior Civil Judge, Hindupur in I.A.Nos.1, 2 and 3 of 2016 in O.P.No.1 of 2014 and consequently I.A.Nos.1, 2 and 3 of 2016 stand dismissed.

The Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed. There shall be no order as to costs.

A.V. SESHA SAI, J

September 30, 2016

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THE HON'BLE SRI JUSTICE A.V. SESHA SAI

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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