

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.2278 OF 2016

DATED:15-07-2016

Between:

Vooda Venkat Rao
and others

... Petitioners

And

Vooda Surya Ramu
and others

... Respondents

COUNSEL FOR THE PETITIONERS: Mr. Prabhala Raja Sekhar

COUNSEL FOR THE RESPONDENTS: Mr. M. Radha Krishna

THE COURT MADE THE FOLLOWING:

ORDER:

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This civil revision petition arises out of order dt.19.1.2016 in I.A. No.1625 of 2015 in O.S. No.23 of 2004, on the file of the learned II Additional District Judge, Visakhapatnam.

Respondent No.1 filed the above mentioned suit for partition of the suit schedule property. The petitioners are defendant Nos.1, 2, 4, 5 and 7 to 9 therein. They filed I.A. No.1624 of 2015 in the said suit under Order XVI Rules 1(2) and 6 of the Code of Civil Procedure, 1908 (CPC) to summon the Commissioner, Narsipatnam Municipality, to produce all the documents submitted by respondent No.1 – plaintiff in connection with his application made for permission for construction of building in Survey No.129, bearing D.No.36-32, Ramaraopeta, Narsipatnam, office copy of the proceedings and the sanctioned plan issued by the Commissioner, and to give evidence. The petitioners sought for summoning of all those documents on the plea that in the year 1991 partition has taken place between the parties in which the plaint 'A' schedule property fell to the share of respondent No.1 and that after obtaining permission for construction he has constructed the building, after filing of the suit. The lower Court has however dismissed the said application inter alia on the ground that the Commissioner of Narsipatnam Municipality, being an official witness, is not competent to speak about the partition, if any, among the parties to the suit, that no interference whatsoever can be drawn by perusing the plan filed by respondent No.1 – plaintiff and the proceedings of the Commissioner, Narsipatnam Municipality approving the plan and that therefore no purpose will be served by summoning the Commissioner, Narsipatnam Municipality.

While this Court does not intend to express any opinion on the

view expressed by the lower Court, the application of the petitioners suffers from insurmountable hurdle, namely, that unless the three conditions mentioned in sub-rule (2) of Rule 129 of the Civil Rules of Practice and Circular Orders, 1980, are satisfied, the application for summoning a public officer for production of records in his custody is not maintainable. These three conditions are as follows:

- (1) That the document/documents the production of which is required shall be set out in the affidavit;
- (2) That the relevancy of the document/documents shall be explained in the affidavit;
- (3) That in cases where the production of a certified copy would answer the purpose, whether application was made to the proper officer and the result of such application shall also be indicated in the affidavit.

Under sub-rule (3), no court shall issue summons unless it considers the production of the original document is necessary or is satisfied that the application for a certified copy has been duly made and has not been granted.

In the instant case, the petitioners have not pleaded that condition No.3 of sub-rule (2) mentioned supra was complied with. Irrespective of whether the production of the proposed evidence would advance the case of the petitioners, the proposed documents being public documents, the petitioners are entitled to obtain certified copies thereof. The petitioners have not pleaded that production of certified copies would not serve the purpose or that they made an application for obtaining the certified copies. As the petitioners failed to satisfy these mandatory conditions, they are not entitled to seek summoning of the public officer for production of such documents. In this view of the matter, I do not find any reason to set aside the order under revision. However, this order would not preclude the petitioners from obtaining certified copies and filing an appropriate application before the lower Court for receiving the same. In such event, the lower Court

shall decide the application on its own merits without being influenced by the observations made in the order under revision.

Subject to the above observations, the civil revision petition is dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.2907 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

15-07-2016

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Note: LR copies to be marked.

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