

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3352 OF 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging order in I.A.No.34 of 2016 in O.S.No.476 of 2008 passed on 25.02.2016 by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, declining to issue summons to the wife of the first defendant.

2. The petitioner filed the suit for partition of the suit schedule property into two equal shares and the schedule consists of several items. One of the item was gifted by D-1 in favour of his wife, the proposed witness to be summoned, who raised a contention that the property gifted to the proposed witness is his separate property and to establish that it is a joint family property, the witness D-2 is required to be examined to elicit truth in the contention of the D-1.

3. The second respondent filed counter denying the cause shown by the petitioner stating that the petitioner failed to adduce any evidence to prove that the suit schedule property is the joint property and therefore, there is no need to summon the witness, wife of the first defendant, prayed for dismissal of the petition.

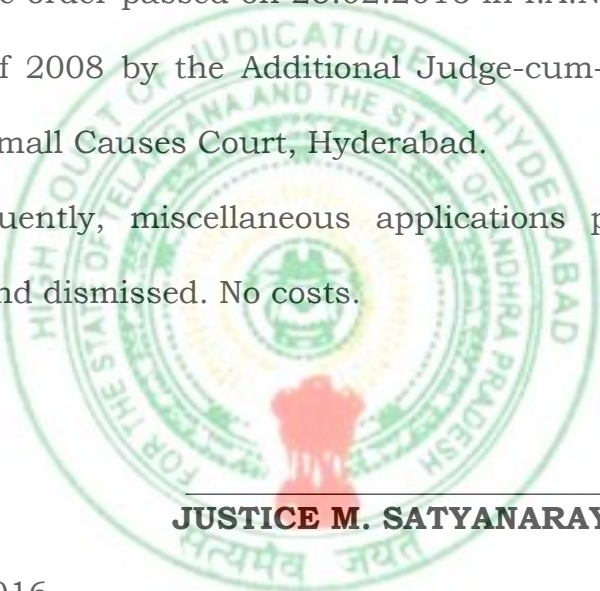
4. Upon hearing argument of both the counsel, the Trial Court dismissed the petition on two grounds. The first reason is that the petitioner quoted wrong provision of law in the petition and the second ground is that the petitioner without filing an application to reopen the evidence of the plaintiff filed the present petition. Therefore, this petition is not maintainable.

5. Undisputedly, the suit was filed for partition of the suit schedule property claiming that it is the joint property purchased by the petitioner/plaintiff and the first defendant. It is also contended that one of the items was gifted to the second defendant by the first defendant, which belongs to the petitioner/plaintiff and the first defendant. For the purpose of eliciting truth, the second defendant is to be examined as witness.

6. In a suit for partition, when the plaintiff is asserting that it is the joint property, it is for the plaintiff to establish that it is a joint property and that the other item is inclusive of joint property. Allegedly, the item which is gifted to D-2 is part of the joint property. But, to prove his case, the petitioner/plaintiff wanted to summon the second defendant by filing petition under Order XVI Rule 1 of the Code of Civil Procedure (for short 'C.P.C'). But, under Order XVI Rule 1 of C.P.C., the Court cannot issue summons to a party to the suit, but the appropriate provision is under Order XVI Rule 14 of C.P.C, which permits the Court to issue summons to any person, including a party to the suit. Consideration to exercise

power under Order XVI Rule 1 and Order XVI Rule 14 are different. But the real purpose is only to elicit truth without assigning any specific reason. The Trial Court rightly exercised its discretion in dismissing the petition, since it is for the petitioner to prove his case independently not based on the weakness of the defendant. Therefore, the order under challenge does not suffer from any illegality warranting interference of this Court by exercising power of superintendence under Article 227 of the Constitution of India. Hence, the civil revision petition is dismissed without costs, confirming the order passed on 25.02.2016 in I.A.No.34 of 2016 in O.S.No.476 of 2008 by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad.

Consequently, miscellaneous applications pending if any shall also stand dismissed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:07.09.2016

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