

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2602 OF 2016

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the order dated 25.01.2016 passed in I.A.No.952 of 2015 in O.S.No.3056 of 2010 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad.

The petitioner herein filed suit for declaration that the permission granted by the respondent Nos.1 and 2 in favour of the respondent Nos.3 to 9 vide permit No.162/77 and 162/76 dated 04.08.2008 in respect of house numbers 8-2-686/B/S/5 and 6 and 8-2-686/B/S/6 and 7, Banjara Hills and further permission given vide permit No.128/87 and 128/88 in favour of the respondent Nos.3 and 4 in respect of House numbers 8-2-686/B/S/4 and 8-2-686/B/S/3 and permit vide No.168/78 dated 03.06.2008 in favour of respondent Nos.8 and 9 in respect of H.No.8-2-686/B/S/7 as null and void and also permanent injunction restraining the respondent Nos.1 and 2 not to make any new assessment in favour of respondent Nos.3 to 9 in respect of House No.8-2-686/A/1 to 8-2-686/A/3 and 8-2-686/A/3/1, situated in Sy.No.129/45, Road No.12, Banjara Hills, Hyderabad.

The petitioners/plaintiffs filed a petition under Order XVI Rule 14 of Code of Civil Procedure to issue summons to defendant Nos.3 and 4 to permit the petitioners to cross-examine them.

It is a suit for declaration and injunction restraining the respondents from assessing the property to tax. The relief claimed in the suit is a discretionary and equitable relief under Section 34 of Specific Relief Act and the plaintiffs have to succeed on the strength of their own case and for any reason the defendant Nos.3 and 4 did not enter into witness box, the question of cross-examine them by summoning them does not arise. Normally the witness has to be examined in chief, and it is followed by cross-examination. In the absence of examination in chief, the question of cross-examination of witness does not arise.

Learned counsel for the petitioners contended that there is any amount of discrepancy with regard to survey numbers of the property conveyed under different sale deeds and those sale deeds are with the defendant Nos.3 and 4 in the suit and unless they were cross-examined, the truth cannot be elicited.

If for any reason, they did not enter into the witness box, the petitioners may take advantage of their absence and still it is for the petitioners/plaintiffs to prove their independent case by adducing cogent and satisfactory evidence and cannot be allowed to take advantage of the weakness in the case of opposite party, since the suit is filed for declaration and for consequential injunction, it is purely equitable and discretionary relief.

Therefore, the Court by exercising power under Order XVI Rule 14 of Code of Civil Procedure may issue summons to any person including strangers to suit and this power is purely discretionary and the trial Court rightly exercised this discretionary power, since, the petitioners/plaintiffs cannot take advantage of the weakness in the case of the defendants. In a suit for declaration, it is for the plaintiffs to establish their own case independently. Of course, the trial Court assigned two different reasons i.e. (1) it is belated application and (2) the suit is only for injunction simplicitor, but on this ground alone, the impugned order passed by the trial Court cannot be set aside, as the trial Court rightly exercised its jurisdiction while dismissing the petition filed by the petitioners/plaintiffs.

Therefore, I find no reason to interfere with the order passed by the trial Court by exercising power under Article 227 of the Constitution of India.

In the result, the revision is dismissed. No order as to costs.

The miscellaneous petitions pending, if any, shall also stand closed.

The trial Court is directed to decide the case uninfluenced by the observations made herein above.

JUSTICE M. SATYANARAYANA MURTHY

06.09.2016
Ksp