

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION No.461 of 2011
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ORDER:
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This Civil Revision Petition, by the petitioner/defendant, under Article 227 of the Constitution of India, is directed against the orders dated 20.01.2011 of the learned Junior Civil Judge, Tandur of Ranga Reddy District passed in I.A.No.768 of 2010 in O.S.No.191 of 2003 filed under Rule 129 of the Civil Rules of Practice requesting to summon the Commissioner, Tandur Municipality to cause production of the original demand register of taxes for the year 1993-94 pertaining to house number 8-1-50/4 of Maniknagar, Tandur and also the original proceedings of the Commissioner, Tandur Municipality in D/774/1994 dated 27.05.1994, as the said documents are required for proper adjudication of the *lis*.

2. I have heard the submissions of the learned counsel for the petitioner/defendant ('defendant', for brevity) and the learned counsel for the respondent/plaintiff ('plaintiff', for brevity). I have perused the material record.

3. The facts necessary for consideration and the case of the plaintiffs, in brief, are as follows:-

The plaintiff brought the suit for recovery of the house bearing number 8-1-50/4 of Maniknagar, Tandur, morefully described in the schedule annexed to the pliant *inter alia* contending that the name of the plaintiff is originally recorded in respect of the said house in the municipal records of Tandur Municipality and that he has been paying the property tax in respect of the said house property and that he is being demanded by notices to pay the property tax and that therefore, he is the owner of the plaint schedule building and that the defendant, having filed a civil suit in O.S.No.115 of 1995 against the plaintiff, had later withdrawn the said suit and that the defendant had later manipulated and created the patta in her favour and that on the basis of the manipulated records obtained from the office of the Mandal

Revenue Officer, Tandur, she had got her name recorded in the municipal records and that the change of the name in respect of the house in the municipal records was done by the proceedings dated 27.05.1994 without notice to the plaintiff and that in the facts and circumstances of the case, the production of the original records aforementioned is necessary to know the real facts and hence, the subject petition is filed before the trial Court to summon the Commissioner, Tandur Municipality to cause production of the said original records and that the trial Court rightly allowed the petition of the plaintiff.

4. The specific case of the defendant is that a ownership certificate was issued showing the name of the defendant as the owner but not the plaintiff and that the contention of the plaintiff that the records are manipulated is incorrect and that the plaintiff had wilfully failed to obtain the certified copies of the two public documents now sought to be summoned and that the present petition filed to summon the witness to produce the documents without making an attempt to obtain the certified copies is only intended to drag on the proceedings and waste the valuable time of the Court and that the plaintiff did not question the proceedings of the municipality in regard to the mutation of the property in the name of the defendant and that therefore, the petition is not maintainable and is liable to be dismissed.

5. At the hearing, the learned counsel for the revision petitioner/defendant would submit that the defendant's specific case is that the property was given to her under Form-D patta certificate issued by the Mandal Revenue Officer, Tandur vide proceedings number D/1553/78 dated 15.01.1988 and that pursuant to the issuance of the said patta, her name was recorded in the municipal records in respect of the plaint schedule building and that she is an illiterate lady and that therefore, taking advantage of the said facts, the plaintiff who was looking after her affairs might have got manipulated and created some documents and got his name entered in the property tax demand register and that the documents being sought to be summoned by the plaintiff do not advance his case and that in a suit for recovery of possession, the plaintiff has to establish his title and his right to recover

possession and that mere mutation of property in the name of the plaintiff or the defendant is not relevant for adjudication of the *lis* and that unless the title and ownership of the plaintiff are established, the plaintiff cannot recover possession of the property from the defendant. He would further submit that the defendant is the second wife of the plaintiff and not distantly related, as is being contended by the plaintiff.

6. On the other hand, the learned counsel for the respondent/plaintiff, while supporting the orders of the Court below, would submit that the plaintiff's suit for recovery of possession is based on title and that the property was originally standing in the municipal records in the name of the plaintiff and that without issuing any notice to the plaintiff, the proceedings dated 27.05.1994 were issued by the Municipality and that therefore, if the property tax demand register and the said proceedings dated 27.05.1994 are directed to be summoned and produced before this Court, the real facts would come to light. He would further submit that since the records are manipulated, the certified copies, even if obtained and filed, would not be sufficient to know the real facts and that the production of the original records by the Commissioner, Tandur Municipality is necessary in the interest of justice.

7. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

8. In the suit for recovery of possession of a house property based on title, the plaintiff places relies upon the entries in respect of the said house in the property tax demand register for the year 1993-94 and the property tax demand notices of the Municipality and *inter alia* contends that without notice to him, the proceedings dated 27.05.1994 were issued and that the property was mutated in the name of the defendant behind his back and that such mutation was obtained by the defendant by manipulating the Form-D patta said to have been issued by the Mandal Revenue Officer, Tandur and that the real facts would come to light if only the Commissioner, Tandur Municipality is directed to cause production of the property tax demand register in respect of the said house for the year 1993-94 and also the said mutation

proceedings dated 27.05.1994. However, no explanation is forthcoming as to why the plaintiff could not obtain and file the certified copies of the said documents.

9. It is pertinent to note that Rule 129 of the Civil Rules of Practice ordains that where the production of certified copies of the documents would answer the required purpose, no Court shall issue summons for production of the original records, unless the production of the original records is necessary. Thus, when certified copies obtained from a public officer, who is competent to grant the same, are filed; and when such certified copies would answer the required purpose, there would not be any necessity for summoning the original records from any public office. The said Rule further lays down that every applicant who has filed an application for production of the records in the custody of a public officer shall state whether application was made to the proper officer for certified copies and the result of such application; and that no Court shall issue summons unless it is satisfied that an application for grant of certified copies has been duly made and has not been granted. Therefore, it is incumbent upon the plaintiff to show that he had first made an attempt to obtain the certified copies by making an application and that the same has not been granted. In the absence of the compliance of the requirements of the said Rule, the present application to summon the original records from the Office of the Commissioner, Tandur Municipality is not maintainable. Further, even if the contention of the plaintiff that there are manipulations in the municipal records is true, it is for the plaintiff to plead and establish that the production of the certified copies would not serve the required purpose and that the production of the originals is necessary. A plain reading of the affidavit of the plaintiff filed in support of the petition would show that it is only baldly alleged that production of the original records is necessary to prove the real facts, but the plaintiff did not make any specific averment that the original records are manipulated and that therefore, the production of the original records is necessary. Therefore, the plaintiff failed to satisfy the necessary preconditions under Rule 129 of the Civil Rules of Practice for granting his request to summon the witness to cause

production of the original records. Therefore, as rightly contended by the learned counsel for the revision petitioner/defendant, the Court below ought not to have acceded to the request of the plaintiff, when the plaintiff had failed to comply with the preconditions laid down in Rule 129 of the Civil Rules of Practice. The trial Court had failed to consider the contentions of the defendant based on the Rule position obtaining and had granted the request of the plaintiff for mere asking. Viewed thus, this Court finds that there is acceptable merit in this Civil Revision Petition and that the impugned order warrants interference and that the Civil Revision Petition deserves to be allowed.

10. In the result, the Civil Revision Petition is allowed and the order impugned is accordingly set aside. Consequently, I.A.No.768 of 2010 in O.S.No.191 of 2003 on the file of the Court below stands dismissed. However, it is made clear that the plaintiff is at liberty to obtain certified copies of both the aforementioned documents and file them before the Court below, if he so desires.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M.Seetharama Murti, J

14th March, 2016
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