

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.2380 of 2015
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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/defendants 1 to 3 is directed against the order dated 13.04.2015 of the learned IV Additional Senior Civil Judge, holding Full Additional Charge of the post of the learned IX Additional Senior Civil Judge, [Fast Track Court], City Civil Court, Hyderabad passed in I.A.no.2 of 2015 in O.S.no.765 of 2008.

2. I have heard the submissions of the learned senior counsel for the petitioners/defendants 1 to 3 ('the petitioners', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the 1st respondent', for brevity). The other respondents 2 to 4 are the defendants 4 to 6 in the suit. I have perused the material record.

3. The facts that lead to filing of this revision, in brief, are as follows:

The petitioners filed an interlocutory application under Order XVI Rule 14 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to examine the following four witnesses, namely, (i) N.Prabahkar Reddy; (ii) Suresh Chandra Gupta; (iii) C.Madhukar Reddy and K.Shankaraiah as Court witnesses by affording an opportunity to both the sides to cross examine them. The said application was resisted by the 1st respondent/plaintiff. On merits, the trial Court had dismissed the application of the petitioners. Therefore, the petitioners had filed this civil revision petition.

4. The facts pleaded and the submissions made in support of the request of the petitioners to examine the aforementioned witnesses as Court Witnesses may be stated, in brief, as follows:

The suit is filed for eviction. The specific case of the 1st respondent in the plaint is that his vendor had informed him that the husband of the 1st defendant by name Krishna Murthy entered into a lease agreement on 30.06.1982 with his vendor agreeing to pay a monthly rent of Rs.1,000/- and that a room was constructed in the schedule premises by his vendor. There was a previous litigation and the same was pleaded in the plaint. The 1st respondent had also pleaded in the plaint, that after the conclusion of the earlier litigation, he had purchased the property under a sale deed of 2007 and that the tenancy was attorned by letter dated 12.01.2008 and that a direction was given to pay the rents and also the arrears of rents. It is stated in the plaint that there was exchange of letters/notices. The suit is instituted against six defendants. To whom amongst the defendants such notice was issued is not alleged in the plaint. However, the notice dated 12.01.2007 is marked as exhibit A2. It shows that it was addressed to six persons. To the said notice, admittedly, a reply under exhibit A3 was given. When another notice dated 12.03.2008 was sent by the plaintiff, a reply thereof was also sent on 03.04.2008. Krishna Murthy had died on 02.09.2006. The 1st defendant in the suit had died on 26.10.2013. The defendants 4 to 6 had remained *ex parte*. The 2nd defendant and her younger sister are now interested in the subject matter. In the written statement filed by the father of Krishna Murthy, it was clearly stated that Suresh Chandra Gupta was the person maneuvering the things and that N.Prabhakar Reddy issued the notice dated 10.01.1987 terminating the tenancy of A. Krishna Murthy at the end of tenancy month of January 1987 and that later on he had again issued another notice dated 06.02.1987 to A.Krishna Murthy stating that the tenancy is terminated by the end of February 1987. After such termination, N.Prabhakar Reddy had not initiated any proceedings against A. Krishna Murthy for eviction. A defence is taken that the suit is barred by limitation and that A. Krishna Murthy and his legal representatives had perfected their title by adverse possession, i.e., they have acquired the right by prescription and that the right to claim eviction stood extinguished and barred. Except for first three months of the tenancy period, at no point of time, rents were paid or

demand and the earlier litigation went on between the parties. It is alleged in the chief examination affidavit for the first time that the defendant sent a cheque for rents to the vendor of the 1st respondent-N. Prabhakar Reddy. The 1st respondent/plaintiff was cross-examined. He had stated that he does not remember whether the cheque was in his custody or in the custody of Prabhakar Reddy, and he has to verify the same. These petitioners/defendants had denied issuance of any such cheque. The defence is that there is no jural relationship of lessor and lessee or landlord and tenant between N.Prabhakar Reddy and A.Krishna Murthy and that they both had entered into an agreement under which N.Prabhakar Reddy agreed to sell the property to A.Krishna Murthy. Krishna Murthy had filed O.S.no.88 of 1987 on the file of the Court of the learned V Additional Judge, City Civil Court, Hyderabad, against Prabhakar Reddy for specific performance. In the written statement, he had pleaded that the tenancy was terminated by him by notices dated 10.01.1987 and 06.02.1987. The said written statement is marked as exhibit B3. N.Prabhakar Reddy was examined as a witness in the earlier suit and his deposition is marked as exhibit B13 in the present proceedings. From the depositions, it is clear that Prabhakar Reddy terminated the tenancy of Krishna Murthy, but Krishna Murthy did not vacate the premises. The 1st respondent/plaintiff stated that he is not in a position to state whether he would examine his vendor Prabhakar Reddy as a witness. Krishna Murthy was a tenant of Prabhakar Reddy for only three months, i.e., from June to August, 1982 and thereafter, there was no jural relationship between them; but, Krishna Murthy continued in possession from September, 1982 in his own right and as a purchaser of the property. The evidence of the 1st respondent/plaintiff is in the nature of hearsay. The notices of termination of tenancy were issued by Prabhakar Reddy to Krishna Murthy and replies were given by A.Krishna Murthy through his counsel. The said documents are also filed into Court. The plaintiff did not choose to examine Prabhakar Reddy or his father Suresh Chandra Gupta. Hence, it is necessary to examine those two persons as Court witnesses. The Advocate Narayan Reddy who had issued notices on behalf of Prabhakar Reddy is no more.

The son of Narayan Reddy can identify the signature of his father on the notices. Replies were sent on behalf of Krishna Murthy by K.Shankaraiah, Advocate of Kukatpally. Hence, the petitioners are obliged to request to issue witness summons to the said witnesses also. Hence, it is necessary to summon and examine the said witnesses, namely, (i) C.Madhukar Reddy, Advocate; (ii) K.Shankaraiah, Advocate; (iii) Prabhakar Reddy; and, (vi) Suresh Chandra Gupta. Therefore, it would be in the interests of justice now to examine all the said four persons as Court witnesses as the plaintiff had failed to produce the crucial witnesses and as the plaintiff does not want to bring on record the true facts. The trial Court is having ample powers to examine those persons as Court witnesses. Hence, the present petition is filed.

5. In the counter affidavit filed by the 1st respondent, while reiterating the contents of the plaint, which are to some extent stated in the pleading of the defendants 1 to 3, the 1st respondent/plaintiff *inter alia* had contended as follows: 'The tenancy was terminated. In view of the adjudication of the previous litigation by all Courts including the Supreme Court, the validity of the termination notices is not relevant. There is jural relationship between the plaintiff and the defendants and the same is not extinguished. The petitioners/defendants with a *mala fide* intention had denied the title. The defendants who are contesting are misleading the Courts. None of the defendants had entered the witness box to give evidence to support their case. The evidence sought to be adduced by summoning the witnesses, particularly, as Court witnesses is irrelevant. Similar petition filed by the petitioners in I.A.no.48 of 2014 was also dismissed on 22.01.2015. After the dismissal of the said petition, this petition is again filed. The petition is not maintainable and is liable for dismissal.'

6. By the impugned order, the trial Court has dismissed the petition holding that the request is premature. The trial Court had also held in the impugned order that during the previous litigation, late Krishna Murthy's claim is that he was only an agreement holder and that no rights will pass to the

agreement holder and that the issues/questions whether late Krishna Murthy was a tenant holding over or not or whether there was jural relationship or not have to be decided at an appropriate later point of time and that in view of the decision of this Court in **Shaik Abdul Rasool v. G.Lakshmi Reddy**^[1], the witnesses cannot be summoned on the application of the parties and that power to summon witnesses as Court witnesses has to be exercised by the Court on its own accord and not at the instance of the parties to the suit and that the defendants without leading *prima facie* rebuttal evidence in accordance with their defence in the written statement and discharging the onus upon them, are not entitled to request the Court to summon the witnesses as Court witnesses. Be that as it may. I have gone through the pleadings and the order impugned.

7. In this revision petition, the learned senior counsel for the defendants while reiterating the case of the defendants, which is stated supra, had contended that in the facts and circumstances stated, in detail, the examination of the four witnesses as Court witnesses is highly necessary as the plaintiff had failed to examine the crucial witness and as the plaintiff does not intend to bring the real truth on record. He would also submit that if the witnesses are summoned as Court witnesses, both the parties will have an opportunity to cross-examine the said witnesses and that the observations of the Court below that the request is premature and that the witnesses cannot be summoned as Court witness at the instance of the party and that without first examining any of the defendants, the defendants are not entitled to make a request to summon the witnesses as Court witnesses are unjust and unsustainable. He had finally urged that the order of the Court below was passed without considering the facts that the first defendant, Krishna Murthy and C. Narayanreddy, advocate had died and that therefore, summoning of the proposed witnesses has become imminent.

8. On the other hand, the learned counsel for the 1st respondent supported the orders of the Court below.

9. I have bestowed my attention to the facts and the submissions.

9.1 It is fairly conceded at the time of hearing that none of the contesting defendants are examined as witnesses on the side of the defendants as on today before the trial Court. Even without entering the witness box for giving evidence and without even marking their documents, if any, as required under law, the present application is filed by the petitioners/defendants to summon the aforementioned four witnesses as Court witnesses to substantiate the defence of the defendants in regard to the termination of tenancy by notices got issued by Prabhakar Reddy, the issuance of reply notices and the absence of jural relationship between Prabahakar Reddy and Krishna Murthy, who is no more. The evidence on the side of the plaintiff is completed is not in dispute. One of the witnesses-Suresh Chandra Gupta is the father of the 1st respondent/plaintiff. Prabhakar Reddy is the vendor of the plaintiff. The other two witnesses are an Advocate and the son of the another Advocate – late Narayana Reddy.

9.2 The learned senior counsel for the defendants 1 to 3 placed reliance on the following decisions.

- (i) Kondavaeeti Prancbis v. Mallarapu Lurdamma [\[2\]](#)
- (ii) Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna [\[3\]](#)
- (iii) Aitipamula Shivalingam & Anr v. Aitipamula Chinna Narsamma [\[4\]](#)
- (iv) Lalita Tyagi v. M.Chandrakala [\[5\]](#)
- (v) Shaik Rafath Begum v. T.V.R.Anjaneyulu (died through L.Rs) [\[6\]](#)
- (vi) Bonthu Venkatramana v. Patrevu Samba Murthy and others [\[7\]](#)
- (vii) M/s.Kwality Restaurant, Amritsar v. Satinder Khanna, Amritsar [\[8\]](#)

- (viii) Smt.Gangavva v. Arjunsan ^[9]
- (ix) Marappa Gounder v. Sellappa Gounder ^[10]
- (x) G.K.Rao v. A.Henry ^[11]
- (xi) Bhanumathy v. M.Venkatesan and others ^[12]
- (xii) Jagannath Nayak v. Laxminarayan Thakur ^[13]

I have carefully gone through the cited decisions. There is no quarrel with the propositions in the cited decisions, wherein the power of the Court under the provisions of Order XVI Rule 14, Order 18 Rule 3(A) and the directory nature of Rule 3(A) are discussed. It is no doubt true that a party can even without examining himself establish his case by examining witnesses who are competent to testify. Even in cases where the party, who has the knowledge of facts of the case, fails to go into the witness box, depending on the facts and circumstances of the case, the Court may only draw an adverse inference against him for his failure to give evidence. A witness who has personal knowledge about the facts in issue in the suit is a competent witness to speak about the facts in issue. If the evidence of a witness is hearsay evidence, the opposite party can raise an objection that such evidence is inadmissible in evidence or can at the stage of arguments contend that such hearsay evidence of such witness cannot be relied upon to give a finding on the facts in issue. Though Rule 3-A of Order 18 CPC directs that the party wishing to examine himself as a witness, has to give evidence as a witness in the first instance before he examines other witnesses, it vests the Court with the power to permit a party to the suit to give evidence as a witness on his behalf at a subsequent stage, by recording reasons therefor. Thus, under this Rule 3-A, the Court has discretion to grant permission to a party to appear as a witness even after he has produced other witnesses on his behalf. Further, no specific stage is prescribed or fixed by the statute for securing Court's permission. However, a party shall apply at the stage of commencing his evidence and get necessary permission to appear as a witness after he has produced other witnesses on his behalf. Equally, if

sufficient ground is made out, the Court may accord such permission at a later stage even in cases where prior permission was not sought.

9.3 In the case on hand, the defendants 1 to 3 did not specifically state that they do not intend to examine any one of them. They also did not file an application to permit any one of them to appear as a witness at a later stage, i.e., after they had produced the other witnesses on their behalf. Why defendants 1 to 3 are shirking to enter into witness box in the first instance is not explained. It is also not explained as to why they are not in a position to seek necessary permission under Rule 3-A if they intend to appear as witnesses after they had produced other witnesses on their behalf. Therefore, none of the decisions are helpful to advance the cause of the petitioners/defendants in view of the facts and circumstances peculiar to the case.

9.4 No reasons are forthcoming and no explanation is offered by the defendants as to why they are intending to summon the witnesses as Court witness in the first instance even without any one of the contesting defendants entering the witness box. Be that as it may. The learned counsel for the 1st respondent/plaintiff had placed reliance on a decision in **Shaik Abdul Rasool v. G.Lakshmi Reddy** referred to supra in support of the contentions that Rule 14 of the Order XVI does not confer a right upon any party to require the Court to summon and examine any person as a court witness and that a petition under Order XVI Rule 14 filed by the defendants 1 to 3 to summon a witness as a court witness is not maintainable as the Code does not confer a right upon a party to request the Court to examine a person as a Court witness and that the Court is not obliged to exercise the said power at the instance of the parties and that the parties have no right to move an application under Rule 14 of Order XVI of the Code and to request the Court to summon any witness as a court witness. In the cited decision in **Shaik Abdul Rasool** (1st supra), this Court having referred to the earlier decisions and the settled legal principle that when the Legislature has prescribed a mode for exercising of any power that power can be exercised

only in that manner and in no other manner, [vide the decision in **Gujarat Electricity Board v. Girdharlal Motilal** (AIR 1969 SC 267)] had finally held that the power under Rule 14 of Order XVI of the Code is to be exercised by the Court on its own accord and not at the instance of a party to the suit. In the cited decision, it was held as under:

“From the above discussion, what emerges is that, the power under Rule 14 of Order 16 Code of Civil Procedure, is to be exercised by a Court, on its own accord, and not on the insistence by a party to the suit. Though a party to the suit can place any information, which may impress upon or convince the Court to exercise its powers under that provision, an independent application for that very purpose does not lie. If parties are permitted to make independent application for summoning of an individual as a Court witness and are conferred with the right to insist the Court to accede their request, it may lead to several complications. It can be used as a device to overcome their inability or failure to summon a witness, and in certain cases, to fill up the lacuna in the evidence, which is already on record. That was never the intention of the Parliament. If a party wants a particular individual be summoned or examined as witness, it must have recourse to Rules 1 and 1-A of Order 16 Code of Civil Procedure.”

The learned senior counsel for the petitioners did not place before the Court any decision laying down a proposition contrary to the one laid down in the cited case. In the cited decision, this Court observed as follows:

“Though a party to the suit can place any information, which may impress upon or convince the Court to exercise its powers under that provision, an independent application for that very purpose does not lie”.

10. The law is well settled that the pleading is not evidence and that unless one of the parties enters the witness box and translates the pleaded case into evidence, the pleading is of no avail. The trial Court while dismissing the petition had categorically observed to the effect that it is just and proper that the petitioners/defendants 1 to 3 shall first lead evidence in respect of their defence and that thereafter, in case of necessity, they can make a request for summoning the proposed witnesses and that the present application appears to be premature and cannot be considered and therefore lacks merit. Further, the Court below was justified in dismissing the application duly following the binding ratio in the cited decision.

11. Having bestowed attention and given earnest consideration to the facts and submissions, this Court finds that in the facts and circumstances of the case, the impugned order does not brook interference and that the trial Court

is justified in dismissing the application with the aforementioned and other observations in its order.

12. In the result, the Civil Revision Petition is dismissed. However, it is made clear that the dismissal of this revision petition shall not come in the way of the trial court exercising the power under Rule 14 of Order XVI of the Code on its own accord at an appropriate stage, if it so wishes and the facts of the case warrant exercising of such power in the considered view of the trial Court. It is also made clear that, in case, the trial Court does not wish to exercise the *suo moto* power, the order in this revision petition shall not preclude the petitioners/defendants from examining the said four witnesses on their side by summoning them through Court by invoking the provision of Rules 1 and 1A of Order XVI of the Code, after leading the evidence on their side by first examining the party witnesses, i.e., any one or more of the contesting defendants.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

11th April, 2016
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- [\[1\]](#) 2011 (1) L.S 60
 - [\[2\]](#) 1994(3) ALT 425
 - [\[3\]](#) 1997 (6) ALT 475 (D.B)
 - [\[4\]](#) 1998(2) ALD 241 (DB)
 - [\[5\]](#) 2006 (6) ALD 740
 - [\[6\]](#) AIR 2007 ANDHRA PRADESH 23
 - [\[7\]](#) 2004(3) ALD 753
 - [\[8\]](#) AIR 1979 PUNJAB AND HARYANA 72
 - [\[9\]](#) AIR 2001 KARNATAKA 231

[\[10\]](#) AIR 1985 MADRAS 183(1)

[\[11\]](#) AIR 1987 MADRAS 178

[\[12\]](#) AIR 1989 MADRAS 239

[\[13\]](#) AIR 1978 ORISSA 1