

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.6414 of 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/plaintiff is directed against the orders dated 01.11.2012 of the learned Principal Junior Civil Judge, Nandyal passed in I.A.No.1278 of 2012 in O.S.No.199 of 2006 filed under Order XVI Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 requesting to issue summons to one V.Singam Reddy, who is proposed to be examined as PW2 on the side of the plaintiff.

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

3. The facts necessary for consideration, in brief, are as follows:-

The sole plaintiff brought the suit against the defendants for perpetual injunction *inter alia* contending that he has purchased the suit schedule property from his father-in-law by name Pikkili Pedda Bala Hussaini under a registered sale deed dated 02.07.2005 and that the said Bala Hussaini in his turn had acquired title to the property by virtue of the registered gift deed dated 05.07.2003 executed by the 1st defendant and that defendants 2 and 3 are the sons of the brother of the 1st defendant. The defendants are resisting the suit. After PW1 was examined, the plaintiff filed an affidavit in lieu of examination in chief of V.Singam Reddy, who is proposed to be examined as PW2. After filing of such an affidavit, the plaintiff filed a memo before the trial Court stating that the affidavit in lieu of examination in chief of PW2—V.Singam Reddy may be eschewed, as he is not voluntarily appearing before the Court and to enable the plaintiff to summon him to meet the ends of justice. Pursuant to the said memo, the trial Court had eschewed from consideration the affidavit of the proposed PW2 filed in lieu of his

examination in chief. As stated in the memo, the plaintiff had filed an Interlocutory Application requesting the Court below to summon the said V.Singam Reddy as PW2, as he is the attestor of the registered sale deed dated 02.07.2005 and an important witness on the side of the plaintiff. The said petition was resisted by the defendants *inter alia* contending as follows: 'The plaintiff himself had voluntarily filed a memo for eschewing the affidavit filed in lieu of examination in chief of the proposed PW2. Later, the plaintiff had filed the present application to summon the said witness. In the affidavit filed in support of the said petition, no grounds, muchless valid grounds are stated for summoning the said witness.' On merits, the Court below had dismissed the application *inter alia* observing in its orders that no valid and sufficient grounds are mentioned in the affidavit filed in support of the petition and that no *bona fide* grounds and sound reasons are stated by the plaintiff for summoning the said witness. Feeling aggrieved of the same, the plaintiff is before this Court.

4. The learned counsel for the plaintiff, while narrating the facts and the contentions of the plaintiff, which are stated *supra*, would submit that if the affidavit is read along with the memo, it would become manifest that sufficient grounds are made out for summoning the witness.

5. On the other hand, the learned counsel for the defendants, while supporting the order of the Court below, had contended that absolutely no grounds are mentioned in the affidavit filed in support of the petition and that the plaintiff, having once voluntarily given up the witness and requested the Court below to eschew the affidavit filed in lieu of examination in chief, is not entitled to request the Court to summon the said witness.

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

7. A plain reading of the memo filed by the plaintiff before the Court below would show that the plaintiff had requested the Court below to eschew from consideration the affidavit filed in lieu of examination in chief of the witness-

V.Singam Reddy proposed to be examined as PW2, as he is not voluntarily appearing before the Court and to enable the plaintiff to summon him as a witness to meet the ends of justice. Though the said averment is not mentioned in the affidavit filed in support of the petition, if the said contents of the memo and the affidavit are read together, this Court is satisfied that valid grounds are made out for granting permission to the plaintiff to summon the said witness. Viewed thus, this Court finds that there are no tenable objections for declining the request of the plaintiff.

8. In the result, the Civil Revision Petition is allowed by setting aside the impugned order. Consequently, I.A.No.1278 of 2012 in O.S.No.199 of 2006 on the file of the Court below stands allowed. The trial Court shall now issue summons to the proposed PW2–V.Singam Reddy, on the plaintiff depositing the process as per the procedure and permit the plaintiff to examine him as a witness on his side. Since the suit is of the year 2006 and the evidence on the side of the plaintiff is in progress, the Court below shall complete the examination of the said witness on his appearance before the Court below as expeditiously as possible and preferably within one month from the date of the receipt of a copy of this order.

There shall be no order as to costs.

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

M. Seetharama Murthi, J

22nd March, 2016
Bvv