

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.3687 AND 3698 OF 2016

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COMMON ORDER:

These two Civil Revision Petitions are filed challenging the orders in I.A.Nos.988 and 989 of 2015 in O.S.No.605 of 2011 on the file of XIX Additional Senior Civil Judge, City Civil Court, Secunderabad, dated 03.06.2016, dismissing the applications filed under Order XVI Rule 14 C.P.C., and under Section 151 C.P.C., for issue of summons and reopening the evidence of the plaintiffs, respectively.

2. The respondents/plaintiffs filed suit to eject the petitioner/defendant No.1 from the suit schedule premises and the 1st plaintiff is no other than the brother and plaintiffs 2 to 6 are closely related by blood or otherwise.

3. It is the case of the petitioner/defendant No.1 that he and plaintiffs are closely related to one another and the joint family property was divided and a partition deed was executed on 19.09.2009. In the said partition, a part of the suit schedule property was allotted to the share of the petitioner and the other part was allotted to the plaintiffs and defendant No.2 to their share. On the same day, part of the property allotted to the share of the plaintiffs and defendant No.2 was leased out as per lease agreement, dated 19.09.2009. As per the terms of partition deed dated 19.09.2009, the parties have to perform their mutual obligation for payment of certain amount towards difference in valuation of the property allotted to different persons which creates charge on the property. Indisputably, a notice was issued by the 1st plaintiff under Section 106 of the Transfer of Property Act (for short, 'the Act') to determine the tenancy on the ground of

non-payment of lease amount. The petitioner/defendant No.1 made a qualified admission for non-payment of rent, as the mutual obligation casts on the plaintiffs was not discharged by them. The default and termination of tenancy can be decided only in the suit at the end of trial, but the reason for issuing summons to plaintiffs 2 to 6 is that they did not give consent for issuing notice under Section 106 of the Act and that they did not discharge their mutual obligation in terms of partition deed, dated 19.09.2009. Therefore, the petitioner filed these two applications under Order XVI Rule 14 C.P.C., and under Section 151 C.P.C., respectively, for issuing summons to plaintiffs 2 to 6 and for reopening their evidence to elicit truth in the consent allegedly given by the plaintiffs for institution of suit, in view of close relationship between the parties.

4. The respondents denied the right to summon the witnesses and reopen the matter on the ground that the argument of the plaintiffs in the suit was completed and the matter was posted for argument of the defendants and at that belated stage, these petitions cannot be maintained and prayed for dismissal of the same.

5. Upon hearing both the learned counsel, the trial Court dismissed both the petitions assigning its own reasons.

6. Assailing the said orders, the present revisions are filed raising several contentions, more particularly regarding the truth or otherwise in the consent allegedly given by plaintiffs 2 to 6 is to be elicited only by issuing summons under Order XVI Rule 14 C.P.C., in view of close relationship between the parties to the suit. But, the trial Court did not consider the purpose for summoning the witnesses and reopening the evidence in suit.

7. During hearing, Sri A. Sudarshan Reddy, learned Senior Counsel for the petitioner/defendant No.1, contended that in view of

close relationship between the parties, certain facts have to be elicited regarding issuance of notice under Section 106 of the Act and to institute a suit by the 1st plaintiff along with plaintiffs 2 to 6 with their consent and the mutual obligation that casts on plaintiffs 2 to 6 in terms of partition deed, dated 19.09.2009.

8. Learned counsel for the respondent reiterated that at this belated stage, the matter cannot be reopened and summons cannot be taken by the defendants to the plaintiffs invoking Order XVI Rule 14 C.P.C.

9. Indisputably, the suit was posted for argument of defendants after completion of plaintiffs' argument and no steps have been taken during trial to elicit anything by cross-examining plaintiffs 2 to 6, since they were not tendered as witnesses before the trial Court. Cross examination would arise only when a witness was examined in chief, but a party to the suit can be summoned as a Court witness by exercising power under Order XVI Rule 14 C.P.C. In the present case, the parties are not proposed to be summoned as Court witnesses, but as a witness at the instance of the 1st defendant. The purpose of examination of plaintiffs 2 to 6 is only to elicit truth in the alleged consent for issuing notice under Section 106 of the Act and institution of suit for ejecting the 1st defendant from the schedule premises. The contents of the notice are sufficient to find out as to whether the notice was issued by the 1st plaintiff with the consent of other plaintiffs. If the notice was issued by the 1st plaintiff on behalf of other plaintiffs 2 to 6 and with their consent, then the question would arise as to whether any notice was issued with actual consent of other plaintiffs or not. But, the notice is silent with regard to the consent of other plaintiffs. Therefore, the consent for issuing notice under Section 106 of the Act is irrelevant at this stage for deciding the real controversy and the validity of the notice can be assailed during argument in the main suit

and the Court is under obligation to decide the validity of notice under Section 106 of the Act at the end of trial. So far as the consent for institution of suit is concerned, plaintiffs 2 to 6 also verified the plaint along with the 1st plaintiff and hence their consent is irrelevant for institution of the suit, since they are parties to suit.

10. The other ground urged before this Court is that there are mutual obligations in terms of partition deed, dated 19.09.2009, and the obligation to be discharged by the plaintiffs is to be elicited by examining plaintiffs 2 to 6 which is the trump card in the matter in view of the qualified admission made by the 1st defendant for non-payment of rent.

11. No doubt, the petitioner made a qualified admission regarding non-payment of rent in view of mutual obligation that casts upon plaintiffs 1 to 6. If payment of rent is linked with discharge of mutual obligations like payment of any amount towards allotment of property to the plaintiffs in excess of the property allotted to the 1st defendant, it is a ground to examine plaintiffs 2 to 6 as witnesses.

12. In fact, the partition deed is not a part of the record in the interlocutory application before the trial Court. Learned counsel for the petitioner has produced a copy of the partition deed before this Court, at the stage of hearing, for discharging mutual obligation. He has drawn the attention of this Court to Clause 9 of the partition deed, which obligated the plaintiffs to discharge such obligations. On a bare look at Clause 9 of the partition deed, it is evident that the first party agreed to furnish plans etc., to make an application for reconstruction of the building after demolition and the same was complied with and that the second party shall pay 1/6th share in the newly constructed building. These questions cannot be decided in the present suit filed for ejectment, as the scope of the trial in the suit is limited. Even in the

affidavits filed along with the petitions in paragraph No.3, the only ground raised for summoning the witnesses is to arrive at a just and proper decision by the Court, the evidence is to be reopened and summons have to be issued, since the short point involved in the matter is whether plaintiffs 2 to 6 have in fact given instructions for issuance of notice on which the present suit is based. Thus, the limited purpose is only to decide whether plaintiffs 2 to 6 gave instructions or consent to the 1st plaintiff for issuing notice. For that purpose, plaintiffs 2 to 6 need not be summoned and the recitals of the notice are sufficient to decide whether they gave consent to the 1st plaintiff to issue notice under Section 106 of the Act or not.

13. At this stage, learned counsel for the petitioner sought permission to serve interrogatories under Order XII C.P.C. enabling the petitioner to elicit truth in the allegations made in the plaint and consent to issue notice under Section 106 of the Act. A bare look at Order XII C.P.C., the time at which the interrogatives are to be served is silent. However, the petitioner is given liberty to serve interrogatories and follow necessary procedure, if there is no fetter to serve interrogatives at the stage of arguments before the trial Court.

14. In view of my foregoing discussion, I find no grounds to interfere with the orders passed by the trial Court which are under challenge. However, liberty is given to the petitioner to serve interrogatories, if permissible under law, at this stage.

15. With the above observations, both these Civil Revision Petitions are dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:29.08.2016
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