

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.1279 OF 2012

Dated 8-2-2016

Between:

Anala Raja Rao.

..Petitioner.

And:

Pithani Pallava Krishna and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.1279 OF 2012

ORDER:

This revision is preferred questioning the order dated 28-1-2012 on Memo S.R.No.292 of 2012 in A.T.C.No.6 of 2003 on the file of Special Officer-Cum-Junior Civil Judge, Pithapuram, East Godavari District.

Revision petitioner herein is petitioner before Special Officer and the 1st respondent herein is a third party witness and other respondents 2 to 5 herein are respondents in the main A.T.C.

A.T.C. is filed to declare that the revision petitioner is a statutory tenant in respect of schedule land and for consequential injunction. Respondents 2 to 5 herein filed counter disputing the claim of the revision petitioner before the Special Officer.

In the trial court enquiry is commenced and evidence of petitioner's side was over and second respondent herein was examined as R.W.1 and a third party witness i.e., first respondent herein appeared before tribunal to give evidence as R.W.2 and he filed his chief affidavit and along with that, he filed a memo to receive two documents; one is certified copy of sale deed dated 11-1-2008 and number 3

Adnagal issued by Tahsildar U.Kothapalli for Fasli 1420. Trial court permitted third party witness to produce those documents and received them subject to proof and relevancy. Aggrieved by the order of the Special Officer passed on Memo S.R.No.292 of 2012 in A.T.C.No.6 of 2003, present revision is preferred.

Heard arguments.

Advocate for revision petitioner mainly contended that trial court has not followed the procedure, particularly, Order VIII Rule 1A (3) C.P.C. and Order 16 of C.P.C. and Rule 17 of Civil Rules of Practice. He further submitted that the witness without coming on record as party cannot be allowed to produce documents and that too, on a memo and therefore, order of Special Officer dated 28-1-2012 is contrary to law and without jurisdiction. He further submitted that the decision relied on by respondents 2 to 5 herein has no application to the facts of the case since Order VIII Rule 1A (3) C.P.C. was inserted in the year 2002 and therefore, the decision reported in *GYANIRAM AND ANOTHER Vs. GULAB CHAND* (^[1]) cannot be applied to the facts of the case.

Learned advocate for respondents submitted that it is only a procedural irregularity in filing the memo and if any mistake is there, it cannot be rectified and no prejudice will be caused to the petitioner and ultimately those documents have to be appreciated only at the final hearing of the case.

Now the point that would arise for my consideration in this revision is whether the order of the court below is legal, correct and proper?

POINT:

Admittedly, first respondent herein is a third party who appeared as a witness on behalf of respondents in A.T.C. The documents produced by the witness are

certified copies of sale deed in his name and adangal extract issued by Tahsildar in respect of his land. So those documents are third party documents and now the objections of the revision petitioner is that these documents have to be filed in compliance of Order VIII Rule 1A (3) C.P.C. by way of a separate application. It may be relevant to examine the said provision which reads as follows:-

“Order 8. xxx

Rule (1) xxx

Rule 1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him:-

Rule 1A (1) xxx

Rule 1A (2) xxx

Rule (3): “A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit”.

This provision is in respect of production of documents by defendants which are relied upon by defendant.

Admittedly, R.W.2 is not a defendant and he is only a third party appeared as a witness on behalf of one of the party. Filing petition to receive documents after framing of issues and after expiry of 15 days time as contemplated under Order 16 Rule 1 C.P.C. is applicable only to the parties to the proceedings. It is not in respect of third parties. Even as per the procedure, the courts have to give marking of documents, basing on the fact who have produced them. If they are filed on behalf of plaintiff, they have to be marked as ‘A’ series. If they are filed on behalf of defendants, they have to be given ‘B’ series and the documents of third parties have to be marked as ‘X’ series, as per Rule 115 of Civil Rules of Practice. When a third party appeared as a witness along with documents, there is no requirement under law to file a separate

application to receive those documents. Admissibility and relevancy can be examined at the time of marking the documents and party is at liberty to take every objection with regard to admissibility and relevancy. Only requirement is when a third party documents are produced, they have to be filed in a prescribed form as contemplated in Civil Rules of Practice under Rule 17 read with Form-7.

As seen from the material, the only irregularity committed is non-compliance of Rule 17 of Civil Rules of Practice but that is a curable mistake. For that reason, the documents produced by witness cannot be thrown out at the threshold.

For these reasons, I am of the view that this revision can be disposed of directing the Special Officer to follow the Rule 17 read with form 7 while receiving the document of 3rd party and consider the objection of the revision petitioner herein with regard to admissibility of the document and decide the case without being influenced by any of the observations made herein above and also the findings recorded by the trial court in the impugned order dated 28-1-2012. No costs.

Since A.T.C. is of the year, 2003, trial court shall dispose of the main A.T.C. as expeditiously as possible.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 8-2-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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