

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.589 and 705 of 2013
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COMMON ORDER:

These two civil revision petitions under Article 227 of the Constitution of India are filed by the defendants assailing the two separate orders both dated 22.01.2013 of the learned I Additional District Judge, Visakhapatnam respectively passed in IA.nos.7 of 2013 and 9 of 2013 in OS.no.170 of 2005 filed by the plaintiffs under Order XVI Rule 1(2) read with Section 151 of the Code of Civil Procedure, 1908 requesting to issue witness summons to the Joint Sub-Registrar, Gopalpatnam to appear before the Court and produce the documents mentioned in the petition list in IA.no.7 of 2013 and to give evidence as a Court witness in respect of the said document.

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

3 In a suit filed by the plaintiffs for declaration of title and further reliefs, the aforementioned applications are filed to summon the Joint Sub-Registrar to cause production of the petition listed document viz., letter dated 01.05.2012 addressed by the Joint Sub-Registrar, Gopalapatnam to the 2nd plaintiff and also to give evidence as a Court witness in respect of the said document. The case of the 1st plaintiff in support of the said requests is this: - 'The suit is filed by him and his family members for declaration of title and for recovery of the possession from the defendants. The 1st defendant is already examined as DW1. He had made certain admissions in his cross-examination. The 2nd plaintiff never executed any sale deed in favour of the 2nd defendant. It is being contended that the alleged sale deed dated 15.10.1993 is a rank forgery and fabricated one. On 28.04.2012, the 2nd

plaintiff made an application to the Joint Sub-Registrar, Gopalapatnam for issuance of certified copy of the alleged sale deed dated 15.10.1993. The Joint Sub-Registrar by his letter dated 01.05.2012 intimated that no such sale deed bearing document no.373/93 dated 15.10.1993 was registered by the Gopalapatnam Sub-Registrar's Office. A complaint was lodged with the Station House Officer, Gopalapatnam Police Station in respect of the above mentioned fabricated sale deed and a case in Crime no.117 of 2012 was registered against the defendants. In the said circumstances, it has become necessary to request the Court to issue witness summons to the Joint Sub-Registrar, Gopalapatnam to cause production of the office copy of the letter and give evidence as a Court witness.'

4. The case of the defendants, in brief, is this: 'The material allegations are false. No admissions as alleged by the plaintiffs are made in the cross-examination of DW1. The petition is filed with a *mala fide* intention. The plaintiffs' evidence was closed long time back. The Court below is now recording the evidence on the side of the defendants. Therefore, at trial, when the evidence of the defendants is being adduced, the plaintiffs are not entitled to request the Court to issue summons to the witness to cause production of the alleged letter and give evidence as a Court witness. A party cannot make a request to summon a witness for examination as a Court witness. The power to summon a witness as a Court witness has to be exercised by the Court on its own accord and not at the instance of a party to the suit. The petition is filed without showing any reasonable cause.'

5. On merits, the trial Court had allowed both the petitions without passing any reasoned orders. The order in IA.no.7 of 2013 impugned in CRP.no.589 of 2013 reads as under:

'This petition filed under Order R.16 Rule 1(2) of CPC r/w Sec.151 of CPC to issue witness summons to the Joint Sub-Registrar, Gopalapatnam, Visakhapatnam to cause production of the petition listed documents. Petition filed to issue witness summons. Petition allowed.

[Reproduced verbatim]

The order in IA.no.9 of 2013 impugned in CRP.no.705 of 2013 reads as under:

'This petition filed under Order R.16 Rule 1(2) of CPC r/w Sec.151 of CPC

to issue witness summons to the Joint Sub-Registrar, Gopalapatnam, Visakhapatnam and to give evidence as Court witness in respect of the following documents:

Letter dated 01.05.2012 addressed by the Joint Sub-Registrar, Gopalapatnam to the 2nd plaintiff.

Heard. Petition allowed.

[Reproduced verbatim]

6. The main grievance of the defendants is that the orders are passed without assigning any reasons and that the said orders which are bereft of reasons and which are not speaking orders are unsustainable and are liable to be set aside.

7. On the other hand, the learned counsel for the plaintiffs supported the orders of the Court below stating that though the orders are not speaking orders, the orders permitting to summon the Joint Sub-Registrar to cause production of the document and give evidence as a Court witness are valid orders, in the facts and circumstances of the case. He would also submit that the Court below, which is conversant with the trial proceedings, had exercised its discretion judiciously and had granted permission to summon the witness as the Court below is of the well considered view that summoning of the witness to produce documents and give evidence as a Court witness is essential for effective adjudication of the *lis*. He, therefore, submits that the orders though not reasoned orders are otherwise sustainable and prays for the dismissal of the revision petitions.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions. By the orders impugned in these two revisions, the Court by cryptic one sentence orders had allowed both the petitions and had permitted to issue summons to the Joint Sub-Registrar, Gopalapatnam for causing production of the letter as sought for and to give evidence as a Court witness. In the well considered view of this Court, any order, which is bereft of reasons, is unsustainable. It is to be noted that when the suit for declaration of title is being hotly contested by the defendants and when the petitions are seriously opposed, the Court below ought to have passed reasoned orders. Further, the law dealing with the powers of the Court in regard to summoning a witness as a Court Witness is now well

settled. In the decision in **Shaik Abdul Rasool v. G.Lakshmi Reddy**^[1], it was held 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 of the Code filed by a party to the suit 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 this cited decision in **Shaik Abdul Rasool** (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.”

9. The learned counsel for the plaintiffs 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 further 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. In view of the above stated settled legal position and in the light of the further fact that the orders, which are impugned in these revisions are not

speaking orders, this Court is of the well considered view that the orders impugned are unsustainable and that, therefore, the said orders impugned in these two revisions call for interference.

11. In the result, both the Civil Revision Petitions are allowed and the orders impugned in the two revision petitions are set aside. As a sequel, IA.no.7 of 2013 is remitted to the trial Court for *de novo* consideration and disposal on merits and in accordance with the procedure established by law by making it clear that this Court did not express any opinion on the merits of the request made in that application. However, I.A. no. 9 of 2013 in OS.no.170 of 2005 is dismissed. Nonetheless, it is made clear that the dismissal of the said application 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 if it considers that the request already made in the affidavit of the plaintiff can be taken as adequate information to exercise its *suo motu* powers under that provision and if it further considers that the facts of the case warrant exercising of such power in its considered view. It is also made clear that, in case, the trial Court does not wish to exercise the *suo motu* power, the order in these revision petitions shall not preclude the plaintiffs from examining the said Joint Sub-Registrar, Gopalapatnam by filing an application to summon the said witness for being examined on their side.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

1st June, 2016
Vjl