

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3858 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 24.06.2016, in I.A. No.21 of 2016 in O.S. 28 of 2011 passed by the Junior Civil Judge, Amadalavalasa, whereby the petition filed under Rules 1 and 2 of Order XVI of the Code of Civil Procedure, 1908 (for short, 'CPC') for summoning the Tahasildar, Lnpeta Mandal, Srikakulam District, to give evidence and to produce documents mentioned therein was dismissed.

The petition was filed before the trial court under Rules 1 and 2 of Order XVI of CPC to issue summons to the Tahasildar to produce revenue records and documents mentioned therein alleging that those documents are necessary to decide the truth or otherwise in the proceedings issued by the Tahasildar, Lnpeta Mandal, Srikakulam District, with the registers available with him. The trial court dismissed the petition on the ground that there was no representation for the petitioner and summoning of Tahasildar at this stage is not necessary.

The present revision petition is filed challenging the said Order raising several contentions.

Learned counsel for the petitioner requested this Court to afford an opportunity to both the parties before the trial court, setting aside the impugned Order.

The suit was filed for perpetual injunction based on their lawful possession by the plaintiff. Of course, they relied on

certain documents to establish their lawful possession as on the date of filing the suit while complaining the defendant's interference with the enjoyment of the property. But the defendant denied the possession and title over the schedule property of the plaintiff and filed the present petition to summon the Tahasildar to find out the truth and genuineness of the documents relied on by the plaintiff and also by the defendant with reference to the records available with the Tahasildar's Office.

The scope of trial in a suit for bare injunction is limited and the Court is supposed to record a finding as to who is in lawful possession and whether the defendant made any attempt to infringe or invade the legal rights of the plaintiff under Section 38 of the Specific Relief Act, 1963.

Therefore, the title of the parties cannot be gone into attaching finality to such finding, but it can be gone into incidental only to know who is in lawful possession. Therefore, question of deciding the genuineness of documents in a suit of injunction simplicitor is beyond the scope of trial.

The trial court dismissed the petition on different finding that it is not necessary to summon the Tahasildar at this stage. In such case, the petitioner can move application at appropriate stage for summoning of Tahasildar, but keeping in view of the observations made hereinabove, the trial court is directed to decide such application, if any, filed under Rules 1 and 2 of Order XVI of CPC.

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With the above observation, the revision petition is dismissed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 01.09.2016

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