

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL REVISION PETITION No. 2869 OF 2016

ORDER:

Heard learned counsel for the petitioner, Sri Nagaraju Naguru, and learned counsel for the respondent, Smt. Shiv Jyothi, and with their consent, this civil revision petition is disposed of at the admission stage.

2. This civil revision petition is filed by the petitioner/defendant aggrieved by the order, dated 04.04.2016, in I.A.No.988 of 2015 in O.S.No.765 of 2006, whereby and whereunder, the learned III Additional Junior Civil Judge, Kadapa, dismissed the petition filed by the revision petitioner/defendant under Order 16 Rule 1 of the Code of Civil Procedure praying the trial Court to issue summons to three witnesses to be examined on his behalf.

3. The respondent/plaintiff filed O.S.No.765 of 2006 against the revision petitioner/defendant seeking perpetual injunction in respect of suit schedule mentioned Haveli bearing Door No.1/221-8-3, situated within the limits of Municipal Corporation, Kadapa. The petitioner/defendant opposed the suit, *inter alia*, contending that he is the absolute owner of an extent of Ac.0.05 cents in Sy.No.687/1 of Chinnachowk Village and the respondent/plaintiff has been making a false claim in respect of the said property and the plaintiff high handedly put up the plaint schedule small temporary structure without foundation and pillars about 10 days prior to the filing of the suit in the absence of the defendant. Thus, the petitioner/defendant questioned the right and title of the plaintiff in respect of the plaint schedule property.

4. Be that as it may, during trial, plaintiff's evidence was completed and on behalf of defendant, DWs.1 and 2 were examined. At that juncture, the defendant filed I.A.No.988 of 2015 to summon (i) The Assistant Engineer, O/o. A.E.

Operation Section, Kadapa, (ii) The Revenue Inspector, Revenue Section, O/o. Municipal Corporation, Kadapa, and (iii) Sri K.Lakshumaiah (brother of the plaintiff). It is mentioned in the petition that the petitioner proposed to elicit the fraud played by the respondent/plaintiff by examining the aforesaid witnesses.

5. The respondent/plaintiff opposed the said petition and by the impugned order, dated 04.04.2016, the trial Court dismissed the said petition observing that when the dispute was with regard to the encroachment of small portion in the defendant's property by the plaintiff, there was other source of action for the petitioner to seek appropriate relief by way of filing a counter claim before the Court and the way the petition mentioned witnesses would confirm the alleged encroachment was not known. Hence, the civil revision petition.

6. Learned counsel for the petitioner would submit that the trial Court wholly misconceived the proposed purpose of examination of the witnesses, as the petitioner/defendant proposed to examine witnesses 1 and 2 to elicit through them about the respondent/plaintiff obtaining electrical service connection and municipal assessment number and door number and they are not going to speak of any encroachment. Similarly, he proposed to examine the third witness, Sri K.Lakshumaiah, who is the brother of the plaintiff, to elicit the facts relating to the purchase of the property by the plaintiff and others and other related facts. Learned counsel, thus, submit that the aforesaid three witnesses are very much relevant to determine the issues involved in the suit, but, unfortunately, the trial Court, without considering his petition in a proper perspective, dismissed the petition and hence, the same may be allowed.

a. Per contra, learned counsel for the respondent/plaintiff while supporting the order of the lower Court would argue that the petitioner/defendant has not clearly mentioned in his petition about the purpose of proposed witnesses and at any rate

he has not pleaded in his written statement about the fraud allegedly committed by the respondent/plaintiff and further official witnesses cannot be summoned without there being any relevancy. She relied upon the judgment of the Supreme Court in **Ravinder Singh vs. Janmeja Singh and others**¹ and the judgment of this Court in **Shaik Ujauddin vs. Veerabhadra Uma Devi and others**².

7. In the light of the above rival arguments, the point for determination is:

Whether there are merits in this revision petition to allow?

8. As can be seen from the copy of written statement filed along with C.R.P.M.P.No.5555 of 2016 in C.R.P.No.2869 of 2016, the petitioner/defendant made a clear plea to the effect that he was the absolute owner of an extent of Ac.0.05 cents in Sy.No.687/1 of Chinnachowk Village having purchased the same under a registered sale deed, dated 05.08.2002, and that the plaintiff was virtually making a claim over the said property and high handedly put up a small temporary structure without foundation and pillars measuring 8 x 8 feet in the absence of the defendant and that the plaintiff was not the owner of the suit schedule structure, as it was constructed on the site of the defendant.

9. That being the plea of the defendant, by virtue of the petition in I.A.No.988 of 2015, the defendant proposed to summon three witnesses to prove through witnesses 1 and 2 that the respondent/plaintiff obtained electrical service connection and municipal assessment number and door number to the disputed structure and through the third witness, Sri K. Lakshumaiah, he proposed to prove that the plaintiff, the said Lakshumaiah and others have purchased a different property. As such, the purpose for which the witnesses are proposed to be examined cannot be said to be irrelevant or out of context.

¹ (2000) 8 SCC 191

² 2012 (6) ALT 636

10. A party will be permitted to adduce evidence if it is found that the said evidence is relevant and admissible in evidence. In the instant case, in my view, the petitioner has passed the said test. The two citations submitted by the learned counsel for the respondent will not come in the way to allow the civil revision petition, as in **Ravinder Singh (1 supra)** the Apex Court observed that without there being a pleading, no evidence can be permitted to be adduced by a party. In the instant case, as already observed, there is a plea by the petitioner/defendant to the effect that the plaintiff has put up the structure in his site. Of course, the truth or otherwise of the said allegation is a subject matter of appreciation by the trial Court at the ultimate end of the trial. The other citation in **Shaik Ujauddin (2 supra)** is concerned, it was observed that public servants cannot be summoned under Order 16 Rule 1 CPC by private persons without proper relevancy. Here also in the instant case, relevancy has been submitted by the petitioner/defendant, as observed supra.

11. The trial Court in the impugned order has erroneously dismissed the petition on the ground that the petitioner could claim and seek appropriate relief by filing a counter claim and the proposed witnesses are not experts to say about the encroachment. These observations are wholly uncalled for in the context of the present petition. Whether the petitioner/defendant is entitled to establish the alleged encroachment by the respondent/plaintiff without the necessity of filing a separate counter claim or not has to be decided by the trial Court at the ultimate end of the trial but not in this petition. Since the petitioner submitted the relevancy of the witnesses, this Court tends to allow the civil revision petition by setting aside the impugned order.

12. In the result, the civil revision petition is allowed and the impugned order, dated 04.04.2016, is set aside and I.A.No.988 of 2015 is allowed and the

petitioner/defendant is permitted to examine the three witnesses mentioned in I.A.No.988 of 2015, within ten days from the date of this order. The trial Court shall dispose of the suit on merits expeditiously.

Miscellaneous petitions, if any, shall stand closed. No costs.

U. DURGA PRASAD RAO, J

Date: 17.09.2016
ES

- Note: 1) Office shall send a copy of this order to the concerned Court forthwith.
2) Issue C.C. by Monday.

