

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.3473 OF 2016

ORDER:

1. This Civil Revision Petition is preferred challenging the order, dated 29.04.2016, passed in Interlocutory Application No.85 of 2016 in Original Suit No.15 of 2006 on the file of Senior Civil Judge, Bobbili, Vizianagaram District (for short, 'the trial Court').

2. The trial Court has dismissed the Interlocutory Application filed for the relief of recalling of a witness for marking a document in the case. Being aggrieved by the said order, this Civil Revision Petition has been preferred by the Revision Petitioners.

3. Learned counsel for the revision petitioner submits that the petitioners are the plaintiffs, who filed O.S. No.15 of 2006, for perpetual injunction, against the respondents-defendants.

4. On behalf of the defendants, DW.1 was examined during trial. In the cross-examination, DW.1 has denied the suggestion made by the plaintiffs that pattadar passbook and title deed, relied on by the defendants, were obtained by him by creating fictitious documents and, the Tahsildar, Salur has addressed a letter to him to surrender the pattadar passbook and title deed as they are created fraudulently with fictitious documents.

5. Learned counsel for the defendants submits that Defendant No.1 filed a counter in the Interlocutory Application and contended that the suit was of the year 2006 and the trial has been commenced on 09.04.2012 and the matter has been prolonged for about 7 or 8 years with vexatious and frivolous petitions and, at last, the evidence, on behalf of the plaintiffs,

was closed on 12.08.2013. The defendants examined DW.1 and closed their evidence on 22.12.2015 and since the matter has been posted for arguments, at that belated stage, the plaintiffs have filed this application without any *bona-fide* or reasonable ground to summon the Tahsildar, Salur with an intention to harass the defendants and, therefore, sought for the dismissal of the application.

6. The trial Court, on consideration of the arguments on either side, mainly on the grounds that the application was filed at a belated stage and as the Suit is of the year 2006, dismissed the Interlocutory Application.

7. The trial Court has clearly observed in its order that the plaintiffs have been seeking adjournments for advancing arguments and sought many adjournments, and came forward with the present application to summon the Tahsildar, Salur to produce the letter issued by him to the defendants. The plaintiffs have slept over the matter for 9 months and, when the matter was posted for arguments, having obtained several adjournments, filed the instant application for recalling the Tahsildar, Salur, who has addressed a letter to the defendants, to prove the title of the plaintiffs.

8. The point that arises for consideration in this Civil Revision Petition is, whether the order passed by the trial Court is suffering with any illegality or irregularity? And, whether the plaintiffs are entitled to summon the Tahsildar, Salur for production of the letter?

9. **POINT:** Before advertng to the merits of the case, I feel it appropriate to go through the provisions under Order XVI Rules 1 and 6 of C.P.C. Order XVI Rule 1 of C.P.C. reads as under:

“1. List of witnesses and summons to witnesses – (1) On or before such date as the Court may appoint, and not later than fifteen

days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.”

10. The plaintiffs have not given the name of the Tahsildar, Salur to be a witness in this case and filed the application subsequent to filing of the plaint at a very belated stage. On this ground, the plaintiffs are not entitled to recall the witness.

11. Order XVI Rule 3 of C.P.C. reads as under:

“(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.”

12. The plaintiffs have not given any sufficient reason or cause for omission to mention the name of Tahsildar, Salur in the list of witnesses and also the reasons for not producing the document before the Court at the earliest point of time. Therefore, there is violation of this provision also.

13. Order XVI Rule 6 of C.P.C. is also relevant provision, which reads as under:

“6. Summons to produce document – Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.”

14. The said provision can be invoked, in case, if any person is summoned to produce a document, without being summoned to give evidence, only for production of the document. The plaintiffs have not

even taken steps at least under this provision for production of the document before the trial Court, if it is really required for adjudication. The plaintiffs in the affidavit filed before the trial Court, under Order XIX Rule 1 of C.P.C., stated that during the course of cross-examination, DW.1 denied the fact, which was suggested to him, that he did not receive any urgent notice from Tahsildar, Salur *vide* letter No.473/2005, dated 30.11.2008, wherein it was clearly mentioned by the Tahsildar that DW.1 obtained title deed and pattadar passbook in his favour by way of submitting fictitious and void documents. It is the case of the plaintiffs that the Tahsildar, Salur addressed a letter, dated 30.11.2008, to the DW.1 that by producing fictitious and void documents before him, he has obtained pattadar passbook and title deed relating to the suit land and he has to surrender the same before him, within a week. Admittedly, the said notice was issued to the defendants on 30.11.2008 *i.e.*, within two years after filing of the suit. It is obvious that the plaintiffs have not taken any steps since 30.11.2008; the plaintiffs have not specified when that fact came to their knowledge and why they had not taken any steps immediately for summoning the Tahsildar, Salur. It is obvious that the said document has seen the light of the day two years after filing of the suit. When the plaintiffs' feel that the said document is very relevant to prove Ex.B-4, the pattadar passbook and title deed of the defendants are void documents, they should have taken steps for production of the same at the earliest point of time. The plaintiffs have slept over the matter without any diligence till completion of the entire trial and, when the matter was coming up for arguments, they filed this application for recalling the witness for production of the said document. Even if it is true that, the said application is allowed and the document is brought into evidence, it may not prove the case of the plaintiffs that the defendants were not having a better title than the plaintiffs. Since the document said to have been

cancelled by the Tahsildar is to be proved by cogent and consistent evidence and mere letter addressed by the Tahsildar, Salur may not be sufficient to prove that the pattadar passbook and title deed of the defendants are *void*. At the most, the said document may create a doubt in the mind of the Court while disposing of the matter. However, it is the case of the plaintiffs that they are in possession and enjoyment of the schedule property, the burden is on them to prove possession over the schedule property. They cannot rely on the weakness of the defendants or try to disprove the title of the defendants. It is also pertinent to note that when the plaintiffs are having better title over the defendants and when the title deed of the defendants have been cancelled, the plaintiffs would have obtained a certificate to that effect from the Revenue Authority that their titles are valid titles and would have proved their case. The plaintiffs have not taken any such steps and simply intended to call the Tahsildar, Salur only for the purpose of disproving the document of pattadar passbook and title deed of the defendants, marked as Ex.B-4.

15. Having regard to the facts and circumstances of this case, I concur with the findings of the trial Court that the Interlocutory Application is filed at a belated stage and, therefore, I do not see any valid ground to allow this Civil Revision Petition for recalling of the witness and for production of the document at this belated stage.

16. In the result, the Civil Revision Petition is dismissed.

17. In consequence, miscellaneous petitions, if any, pending in this Revision shall stand dismissed as infructuous.

G. SHYAM PRASAD, J

Date: 19-08-2016.
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Date.19-08-2016

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