

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.463 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, questioning the order in I.A.No.305 of 2016 in O.S.No.66 of 2012 dated 22.12.2016 passed by the Junior Civil Judge at Narsapur, Medak District, whereby, the Trial Court declined to summon the Tahsildar, Jinnaram to get original documents i.e. Pahanis from the year 2010 to 2015 in respect of suit property.

The petitioner filed I.A.No.305 of 2016 in O.S.No.66 of 2012 under Order XVI Rule 6 & 7 r/w Section 151 CPC to issue to summons to the Tahsildar, Jinnaram to get original documents i.e. Pahanis from the year 2010 to 2015 in respect of suit property to establish that he is in actual possession of the property. But the Trial Court observed that the record shows that it is an identified matter of the year 2012 and the record further disclosed that the matter is coming for petitioner's evidence from 28.03.2016. The Trial Court further observed that no reason stated by the petitioner to summon the Tahsildar, as he does not have any personal knowledge of any revenue record and therefore, summoning Tahsildar is absolutely waste of public time and time of public officer. It was also observed by the Trial Court that the petitioner prayed to summon the Tahsildar along with record i.e. Pahanis 2010 to 2015, as such Pahanis could have been easily obtained by

petitioner by filing application for certified copies and dismissed the petition.

Now, the present petition is filed challenging the order I.A.No.305 of 2016 in O.S.No.66 of 2012 on various grounds. One of the major grounds raised before this court is that, unless the pahanis for the years 2010-2015 are summoned from the Tahsildar, which are crucial for deciding the possession in a suit for bare injunction by examining the Tahsildar or any concerned officer as a witness, it would be difficult for the petitioner to prove his possession as on the date of filing the suit.

Learned counsel mainly contended that, though the respondent filed Pahanis for the years 2010-2015, which are marked as Exs.B-1 to B-78 before the Trial Court, the specific column regarding possession is not reflected in the original pahanis for the years 2010-2015. Therefore, the authenticity of the entries made in Exs.B-1 to B-78 is doubted. The original records are necessary to establish that the petitioner is in possession and enjoyment of the property. But the Trial Court did not exercise its jurisdiction properly. In such a case, this Court can interfere with the judgment of the Trial Court by exercising supervisory jurisdiction under Article 227 of the Constitution of India.

Learned counsel for the respondent contended that, when the documents are already marked as Exs.B-1 to B-78, at best, the petitioner can obtain certified copies if the petitioner is doubting the authenticity of the entries made in Exs.B-1 to B-78 and produce before the Court to establish that he is in possession of the property. Though they produced certified copies of pahanis for

the years 2010-2015 and marked as Exs.B-1 to B-78, again filed the present petition.

Rule 129 of Civil Rules of Practice deals with production of records in the custody of a Public Officer other than a Court. According to Rule 129, a summons for the production of records in the custody of the Public Officer other than a court shall be in Form No. 23 and shall be addressed to the Head of the office concerned and in the case of a summons to a District Registrar or a Sub-Registrar of Assurances, it shall be addressed to the Registrar or Sub-Registrar in whose office, or sub-office, as the case may be, the required records are kept. Provided that, where the summons is for the production of village accounts, including filed measurement books, such summons shall be addressed to the Tahsildar or the Deputy Tahsildar in independent charge as the case may be.

Whereas, Rule 129(b) stipulates that, every application for such summons shall made by an affidavit setting out (1) the document or documents the production of which is require; (2) the relevancy of the document or documents; and (3) in cases where the production of a certified copy or copies and the result of such application.

Rule 129(c) states that no court shall issue such summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The Court shall in every case record its reasons in writing and shall require the applicant to deposit in court, before the summons is issued, to abide by the

order of the court, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.

Thus Rule 129(c) mandates that no Court shall issue summons, unless the Court is satisfied that the application for a certified copy has been duly made and has not been granted. Here, the petitioner obtained certified copies of pahanis and produced, thereby, question of recording satisfaction that the application for a certified copy has been made and denied does not arise. As such, the question of issuing summons, Thasildar for suppression of documents and given evidence based on such documents does not arise and the Trial Court, though made certain irrelevant observations rightly, declined to pass an order in favour of the petitioner under Order XVI Rule 6 & 7 r/w Section 151 CPC.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru**”¹, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded

¹ 2003 (6) SCC 641

by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge.

In view of the limited powers of this Court under Article 227 of the Constitution of India, having found no error in the order under challenge in the revision petition, this Court cannot interfere with the findings and consequently liable to be dismissed. Therefore, I find no ground to interfere with the order passed by the Trial Court, exercising revisional jurisdiction under Article 227 of the Constitution of India, as the jurisdiction of this Court is supervisory in nature and limited, in view of the law declared by the Apex Court in **Afsan Guru** case (referred supra). Hence, the petition is dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this civil revision petition, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.04.2017

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