

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1839 of 2017

ORDER:

1) Assailing the order dated 07.02.2017, passed in I.A.No.10 of 2017 in O.S.No.803 of 2007 on the file of the Principal Junior Civil Judge, Chittoor, wherein the request of the respondents, in permitting the defendant to summon R.D.O. Chittoor for production of the proposed documents was accepted, the present C.R.P. is filed.

2) The facts in issue are as under:

The petitioners/plaintiffs filed O.S.No.803 of 2007 seeking injunction restraining the defendants and their men from interfering with their possession and enjoyment. Pending trial, the defendants filed the present I.A. to summon the R.D.O., Chittoor, to cause production of the documents annexed to the said I.A. The said documents are as under:

1. Documents relating to G.D.Nellore Mandal, in respect of cancellation of proceedings in Roc.A/ 167/ 2007, dated 12.10.2017 in the appeal filed by defendants in Roc.No.2462/ 2007.
2. Total proceedings in Roc.No.A/ 167/ 2007 dated 12.10.2007.
3. VHS House site file pertaining to S.No.120/ 2 vide proceedings No.A/ 167/ 2007, dated 29.08.2007.
4. Report dated 28.08.2007 submitted by Revenue Inspector, G.D.Nellore,
5. Layout sketch prepared by the Mandal Surveyor with regard to allotment of house sites.
6. F.M.B.Sketch pertaining to S.No.120/ 2.

3) The averments in the affidavit filed in support of the I.A. would show that earlier an advocate-commissioner was appointed to

measure the suit schedule property with the help of Surveyor. The said Mandal Surveyor visited the schedule property and took time for securing the documents, but later failed to produce the necessary documents as they were not available in the office. It is said that meanwhile, the D.K.T. patta standing in the name of the plaintiff's father was cancelled and the authorities also resumed the land. The said property was divided into 12 plots. The 1st plot was said to have been allotted to the defendants. The plaintiffs also filed a suit before the said Court and also an appeal before the R.D.O., Chittoor. Initially the order cancelling the D.K.T. patta was issued by the Tahsildar, Nellore, vide proceedings Poc.No.2462/ 2007, dated 20.11.2007. It is said that though the defendants made an application vide I.A.No.497 of 2016 for production of the documents by the Tahsildar, but for the reasons best known he filed a memo stating that the documents are not available in his office. Since the appeal preferred by the plaintiffs is pending before the R.D.O., Chittoor, the present I.A. came to be filed, to summon the R.D.O., Chittoor and cause production of the documents.

4) A counter came to be filed by the plaintiffs opposing the same. It is urged that the defendants could have obtained documents under Right to Information Act instead of filing the petition at the fag end, thereby creating complications in disposal of the suit. It is further urged that the R.D.O. cannot be directed to produce the documents under the provisions of C.P.C. and as such the application is devoid of merits. In any event it is urged that the application has been filed with a view to drag on the proceedings.

5) After considering the rival submissions made, the trial Court allowed the said I.A. Challenging the same the present C.R.P. is filed.

6) As seen from the record, pursuant to the orders passed by this Court in C.R.P.No.2862 of 2011, an advocate-commissioner was appointed to measure the plaint schedule property with the assistance of Mandal Surveyor. Since the Mandal Surveyor failed to bring the original records, the advocate-commissioner failed to execute the warrant. In the said circumstances, the defendants filed I.A.No.497 of 2016 seeking a direction to the Tahsildar, to cause production of the original records. The said I.A. was allowed on 12.09.2016. The Tahsildar, filed written submissions stating that the documents are not traced in his office. In view of the same, I.A.No.10 of 2017 came to be filed stating that the proposed documents are in the office of R.D.O., Chittoor, hence he may be directed to produce the same, so as to enable the advocate-commissioner to execute the warrant by way of measuring the plaint schedule property.

7) In spite of service of notice there is no representation on behalf of the defendants.

8) The main ground urged by the learned counsel for the petitioners is that under Rule 129 of Civil Rules of Practice, no application can be filed to summon the R.D.O. without making an effort to obtain certified copies of the documents, which are sought to be relied upon. Relying upon Rule 129 (1) and (2) of Civil Rules of Practice and also judgment of this Court in *Vooda Venkat Rao and others v. Vooda Surya Ramu @ Surya Rao and others*¹ learned counsel for the petitioners would contend that the order passed by the trial Court is illegal and improper.

¹ (2016) 6 ALD 59

9) In spite of service of notice there is no representation on behalf of the defendants.

10) In order to appreciate the same, it would be appropriate to extract the Rule 129 (1) and (2) of C.R.P., which reads as under:

“129. Production of records in the custody of a Public Officer other than a court:-

(1) A summons for the production of records in the custody of a 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 field measurement books, such summons shall be addressed to the Tahsildar or the Deputy Tahsildar in independent charge as the case may be.

Provided further that when the summons is for production of records in the custody of high dignitaries like the Speaker of the Lok-Sabha or State Legislative Council etc., the summons shall be in the form of a letter of request in Form No.23-A.

(2) Every application for such summons shall made by an affidavit setting out (1) the document or documents the production of which is required; (2) the relevancy of the document or documents; and (3) in cases where the production of a certified copy would answer the purpose, whether application was made to the proper officer for a certified copy or copies and the result of such application.

(3) 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 are 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.”

11) Rule 129 (1) of Civil Rules of Practice, deals with a situation where documents are sought to be summoned from the custody of the Public Officer other than the Court. Proviso to the said Rule states that where the production relates to Village Accounts, including Field Measurement Book, summons shall be addressed to Tahsildar or Deputy Tahsildar. Rule 129 (2) of the Civil Rules of Practice prescribes the procedure to be followed for summoning the documents. Rule 129 (3) states that an application for issuance of summon shall be by an affidavit setting out; (a) documents which are required, (b) relevancy of the documents (c) in cases where production of a certified copy would answer the purpose, whether the application was made before the officer for a certified copy or copies.

12) Under Sub-rule (3) of Rule 129 of Civil Rules of Practice, no Court shall issue summons unless it considers the production of the original document is necessary or is satisfied that the application for a certified copy has been duly made and has not been granted.

13) It is to be noted that under sub-rule 2 of Rule 129 of Civil Rules of Practice and Circular orders, 1980, three conditions are to be satisfied namely (1) that the document/ documents the production of which is required shall be set out in the affidavit; (2) that the relevancy of the document/ documents shall be explained in the affidavit; and (3) That in cases where the production of a certified copy would answer the

purpose, whether application was made to the proper officer and the result of such application shall also be indicated in the affidavit.

14) It is to be noted here that even earlier the efforts of the defendants to get the warrant executed to measure the plaint schedule property with the help of Mandal Surveyor failed, since the said documents are not available in the office of the Tahsildar. At that time, no objection was raised by the plaintiffs with regard to summoning of Mandal Revenue Officer and Revenue Divisional Officer without obtaining the certified copies, as required under Rule 129 of the Civil Rules of Practice.

15) In Vooda Venkat Rao case (1 supra) relied upon by the learned counsel for the petitioners, the documents are sought to be summoned from the office of the Commissioner of Narsipatnam Municipality in connection with the application made by the petitioner for construction of building in Sy.No.129, of Ramaraoapeta, Narsipatnam, office copy of the proceedings and the sanctioned plan issued by the Commissioner. Under those circumstances, the Court below felt that summoning can only be done if the requirements of sub-Rule (2) of Rule 129 of Civil Rules of Practice are complied with. At the same time, the Court also held that as the petitioners failed to satisfy the mandatory conditions, they are not entitled to summon the public officer. The Court did not find any reason to set aside the order under revision and held that the order shall not preclude the petitioners from obtaining the certified copies.

16) In the instant case, the situation is different. The case on hand related to seeking assistance by the advocate commissioner for execution of the warrant. It does not relate to marking of any of the

documents summoned from the office of the public officer. The application which has been filed by the defendants before the trial Court itself clearly indicate that the documents listed in the petition are available in the office of the R.D.O., Chittoor and that it may be just and necessary to direct the R.D.O., Chittoor to cause production of the documents, for execution of the warrant. Hence, the judgment relied upon by the learned counsel for the petitioners is not applicable to the case on hand.

17) Further, the 1st document which is sought for relates to the proceedings issued against the father of the plaintiffs and the appeal proceedings filed by the plaintiffs. Admittedly, the defendants were not party to the proceedings and even if the defendants applied for certified copies, definitely the authorities will not be in a position to furnish a certified copy of the same to them. Insofar as documents Nos.5 and 6 are concerned, namely Lay Out Sketch and F.M.B. sketch, the Tahsildar, in whose custody the documents are supposed to be, and to whom the summons are to be issued under 129 (1) proviso for production of the same, failed to produce the same in spite of making request. Left with no other option, an application came to be filed seeking a direction to the R.D.O. for production of the same. Insofar document No.2 is concerned, it relates to proceedings in Rbc.No.A/ 167/ 2007 dated 12.10.2007, relating to cancellation of the patta in favour of the father of the plaintiffs. The defendants will not be in a position to get a certified copy of the same.

18) Having regard to the reasoning given above and taking into consideration of the facts and circumstances of the case, this Court is of the view that there is nothing wrong in summoning the R.D.O. to cause production of the documents.

19) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

20) As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

29.08.2017
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