

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.2543 AND 2585 OF 2017

COMMON ORDER:

These two petitions are filed, aggrieved by the common order in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 dated 18.04.2017 passed by the V Additional District Judge, Medak at Sangareddy, dismissing both the petitions filed under Section 151 C.P.C to reopen evidence of the plaintiff for the purpose of recoding evidence of Mr. M. Gopal as Court witness and summoning the witness Mr. M. Gopal, s/o M. Adivaiah, who is the General Power of Attorney of the first defendant, produce original lay out under which he sold the suit schedule plots for the land in Sy.No.72 of Bhanur Village and to give evidence under Order XVI Rule 14 & 15 C.P.C

The affidavits and counter affidavits in both the I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 are one and the same. Therefore, the Trial Court decided both the applications by common order and I also find that it is expedient to decide these two revision petitions by a common order.

The petitioners/plaintiffs filed O.S.No.82 of 2010 for declaration of title and for perpetual injunction in respect of the suit lands against the respondents from interfering with their peaceful possession and enjoyment of the suit schedule property.

The respondents filed written statement alleging that the petitioners have fabricated the suit documents and denied their transactions with Mr. Gopal who is General Power of Attorney of

the first defendant. While the suit is pending before the Trial Court for advancing arguments, learned counsel for the petitioners advised them to adduce the evidence of GPA Holder i.e. Mr. Gopal to elicit the truth in transaction between them, being the GPA Holder of the first respondent, as Mr. Gopal is material witness to depose before the Court about the transactions took place with them as well as the transaction with the third respondent.

The third respondent claimed that Mr. Gopal sold the land covered by the suit schedule property under registered sale deed and in fact, the said person being the registered GPA Holder of the first respondent executed registered sale deed way back in the year 1989 in their favour on the basis of the GPA given by the first respondent. It is also contended that, Mr. Gopal refused to attend the Court to examine him as a witness. Therefore, it is necessary to summon Mr. Gopal and produce original layout under which he sold the suit schedule plots in the land in Sy.No.72 of Bhanur Village for the purpose of giving evidence, to decide real controversy between the parties.

Respondents 3 to 6 filed counter affidavit denying material allegations in the affidavit annexed to the petition, *inter alia*, contending that the interlocutory applications are speculative, suppressing the real facts filed petition before the Court with an intention to protract the case for some time when the matter was posted for arguments after completion of their evidence of both the parties. It is averred in the counter that the petitioners did not take steps for more than seven years after closing the evidence of the plaintiffs and that too, it is an identified case and this Court

cannot summon the defendant as a witness of the Court, since it is for the petitioners to prove their independent case and that the defendants who remained *exparte* cannot be summoned by the plaintiffs as a witness to prove their positive case and prayed for dismissal of the petition.

The Trial Court, upon hearing argument of both the counsel, dismissed the interlocutory applications only on the ground that the petitions were filed are at belated stage, as the case pertains to the year 2010 and that too they are identified cases.

Aggrieved by the common order in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010, the present two revision petitions are filed under Article 227 of the Constitution of India, raising several contentions *inter alia* contending that the Trial Court dismissed I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 based on surmises and conjectures and the delay alone is not a ground to summon any witness and summon any person as a Court witness. In fact, Mr. Gopal who is the second defendant being the GPA Holder of first respondent remained *exparte* and in such case, except summoning him as Court witness, the petitioners have no other alternative to establish their independent claim and the Trial Court dismissed I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 on erroneous appreciation of facts and prayed to set-aside both the orders by allowing both petitions in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010.

During hearing, learned counsel for the petitioners Sri Ch. Ravinder would contend that any person can be summoned

as a Court witness, if the Court finds that evidence of particular witness is relevant and necessary to decide the real controversy between the parties, irrespective of the stage of proceedings. But the Trial Court, on the sole ground that both the applications are at belated stage, dismissed those two applications. Hence, dismissal of interlocutory applications on the ground of delay is erroneous and consequently, the common order in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 is liable to be set-aside.

Learned counsel for the petitioners, in support of his contention placed reliance on judgments of this Court in **Kosuru Kalinga Maharaju v. Kosuru Kaikamma¹**, **National Insurance Co. Ltd v. Susru Sea Foods, Visakhapatnam²**, **T. Narayana Reddy v. Patan Razak Khan and another³** and also judgment of the Division Bench of Patna High Court in **Sri Awadh Kishore Singh and others v. Sri Brij Bihari Singh and other⁴**.

Though notice was served on the respondents, none appeared.

Considering the contentions of the learned counsel for the petitioners Sri Ch. Ravinder and perusing the common order under challenge, the point that arose for consideration is: **“whether the Court can exercise power under Order XVI Rules 14 & 15 C.P.C to summon a defendant, who remained *ex parte*, as a Court witness at belated stage. If not, the common order passed by the Trial Court in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 are liable to be set-aside.”**

¹ 1999 (6) ALD 789

² 2005 (1) ALD 464

³ 2009 (1) ALD 839

⁴ AIR 1993 PATNA 122

P O I N T:

I.A.No.262 of 2017 is filed under Section 151 of C.P.C praying to re-open the evidence of plaintiff for the purpose of recording of evidence Mr. M. Gopal as Court witness. Section 151 C.P.C deals with inherent power of the Court and in the absence of any specific provision in the C.P.C, the Court can exercise such inherent power under Section 151 C.P.C. For reopening evidence of the plaintiffs, there is absolutely no provision in C.P.C which enables the Court to reopen the evidence. In the absence of any provision, this Court can exercise such inherent power.

The other application I.A.No.263 of 2017 is filed under Order XVI Rule 14 & 15 C.P.C to summon the witness Mr. Gopal, s/o M. Adivaiah, and to produce layout based on which, he sold the suit schedule plots for the land in Sy.No.72 of Bhanur Village for the purpose of giving evidence. Order XVI Rule 14 C.P.C enables Court of its own accord summons any person as witness who is strangers to suit, subject to the provisions of C.P.C as to the attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed and may examine him as a witness or require him to produce such document.

The power of the Court under this rule to examine witnesses on its own motion is discretionary. Ordinarily, it is for the party to summon the witnesses necessary for his case and when the party has done everything in that regard, it is the duty of the Court to enforce their attendance. This rule is only intended to enable the Court to secure suo motu, the attendance of a witness whose evidence appears to the Court to be necessary. The discretionary powers under the rule should not be used to help a party to tide over a real or imaginary difficulty which may well be the result of the party's own negligence or deliberate omission. Thus, to exercise such power under Order XVI Rule 14 & 15, the Court must put a guard while issuing summons to any person whether he is a party to the suit or not to avoid the party's own negligence or deliberate omission. Thus, the Court is conferred with power to summon any person including a party to the suit. But here, Mr. Gopal is a party to the suit who is arrayed as second defendant allegedly executed documents in favour of both plaintiffs and defendants 3 to 6, representing the first defendant. Thus, the act done by Mr. Gopal binds the first defendant, since the relationship between the first defendant and the said Mr. Gopal is Principal and Agent.

A bare look at the heading of the rule indicates that the Court may summon any person as a witness who is a stranger to the suit. But the witness proposed to be examined is not a stranger to the suit, but the rule is amended substituting the words "to examine any person including a party to the suit" to the words "to examine any person other than a party to the suit" by Amendment Act 104/1976. After amendment by Act 104/1966, though the

heading of the section remains as it is, it permits the Court to summon any witness including a party to the suit. In such a case, the Court can exercise such power while striking balance between the rights of both the parties.

In the present case, both the plaintiffs and defendants 3 to 6 claiming title to the property by virtue of the registered sale deeds, executed by Mr. Gopal, witness proposed to be summoned and the said Mr. Gopal, being the GPA Holder of first defendant got approved the layout and divided the land into plots and sold them. Therefore, he is the material witness to prove execution of sale deeds in favour of the plaintiffs and defendants 3 to 6 to decide the real controversy between the parties, more particularly, when the defendants 3 to 6 raised a specific contention that the documents executed relied upon by the plaintiffs/petitioners are fabricated. In normal course of events, a document can be proved by examining anyone of the attestors or the scribe, besides examining a party to the document. Here, the petitioners were examined. But it appears that to enable the Court to come to a right decision, these petitions are filed by the petitioners. Therefore, power to issue summons on a party to the suit is conferred on the Court, though he remained *exparte* in the original suit, if the Court is satisfied that his evidence would be helpful to decide the real controversy between the parties.

In **Kosuru Kalinga Maharaju**¹ case, this Court held as follows:

"A reading of Rule 14 of Order 16 would leave no doubt in the mind to say that "either party to the suit proceedings

can summon a person including a party to the suit who is not called as a witness by a party to the suit, as a witness".

Legislature has felt the need for a direct provision enabling the Court to summon a party for giving evidence as a witness to help curbing the malpractice of a party not appearing as a witness and forcing the other party to call him as a witness, and adjudicate the issues properly. What is laid down in the above provision is that if the Court is satisfied about such a necessity to cause any person to be examined as a witness, Court can summon such person as a witness. The emphasis is laid on the subjective satisfaction of the Court. However, this power is to be exercised by the Courts guardedly and not as a matter of routine."

In **National Insurance Co. Ltd**² this Court held that, a Civil Court is conferred with jurisdiction and power to examine any person including a party to the suit who is not called as a witness by a party to the suit. This can be done on its own motion, which means and includes that its jurisdiction can even be set in motion by any of the parties to the suit. The words "to examine any person, including a party to the suit" has been substituted for "to examine any person other than a party to the suit" by Act 104 of 1976, with effect from 1-2-1977. What was otherwise implicit is now made explicit that even a party to the suit who is not called as a witness by a party to the suit can be called by the Court as a witness to give evidence, or to produce any document in his possession.

Relying on the judgment of **National Insurance Co. Ltd**², this Court took a similar view in **T. Narayana Reddy**³ case.

In **Awadh Kishore Singh**⁴ case, the Division Bench of the Patna High Court held as follows:

"No provision could be brought to our notice on behalf of any of the parties to show that a party is debarred from examining its adversary as a witness on his behalf. A plaintiff can examine any witness he so likes - the witness

may be a stranger, may be a man of his own party or party himself or may be a defendant or his man. Therefore, if a plaintiff wants to examine a defendant as a witness on his behalf, he cannot be precluded from examining him on the ground that the said defendant has neither appeared in the suit nor upon appearance filed written statement nor prayer for filing written statement has been rejected."

19. In the instant case, it is not as if, one of the defendants is summoned to give evidence on behalf of the plaintiff - though there are no legal impediments, as such, for even summoning a defendant to be examined as a witness at the instance of the plaintiff; if not as a witness on behalf of the plaintiff. The Court, in the interest of justice, can always summon even a stranger and in a given case any of the parties to the suit to give evidence if such evidence is required for resolution of the dispute in an effective manner.

Though the judgment of Patna High Court is not a binding precedent, but in view of persuasive value, the Court can consider, since the view expressed by this Court in the three judgments of this Court is identical to the law declared by the Division Bench of Patna High Court. The consistent view expressed by the Courts in all the judgments supports the case of the petitioners that a party to the suit can also be summoned as a Court witness by exercising power under Order XVI Rule 14 & 15 C.P.C. and to produce any document. Here, the Trial Court dismissed the interlocutory applications only on the ground that they are belated.

But, in view of the language used under Order XVI Rule 14 & 15 C.P.C, more particularly, the words **"where the Court at any time thinks it necessary"** assumes importance.

When the rule permits to summon any person as a witness, whether he is a party to the suit or not, the Court cannot reject such request on the ground of delay. The Trial Court did not consider the language used under Order XVI Rule 14 & 15 C.P.C in a proper perspective and appears to have negated the relief only on the ground of expediency, as it is an identified matter, pertaining

to the year 2010. But, in the name of expediency, the Court shall not shirk its responsibility to decide the real controversy by procuring evidence, either on its own motion or on application filed by the party by exercising power under Order XVI Rule 14 & 15 C.P.C. Therefore, dismissal of I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 dated 18.04.2017 by the V Additional District Judge, Medak at Sangareddy, on the ground of delay is unsustainable, in view of the clear language used in Order XVI Rule 14 C.P.C. Moreover, the Trial Court did not record any other reasons for dismissing the applications. Therefore, the order under challenge is liable to be set-aside on this ground alone.

When the petitioners are contending that the evidence of the proposed witness Mr. Gopal is necessary to decide the real controversy between the parties, it is for the Court to decide whether his evidence is necessary to decide the real controversy or not and after recording its satisfaction, as to the necessity to examine Mr. Gopal as a Court witness, the Court can summon or otherwise dismiss the application. But here, all the facts are before the Court, but did not record any satisfaction either to summon or decline to summon Mr. Gopal as a witness. In such case, the common order is contrary to the purport to Order XVI Rules 14 & 15. Hence, the order in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 dated 18.04.2017 passed by the V Additional District Judge, Medak at Sangareddy is liable to be set-aside, while remanding the matter to the Trial Court for fresh consideration based on the law declared by this Court in the judgments referred supra, after

recording its satisfaction as to the necessity to examine Mr. Gopal as a Court witness.

In the result, both the civil revision petitions are allowed, setting aside the order in I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 dated 18.04.2017 passed by the V Additional District Judge, Medak at Sangareddy, remanding both I.A.Nos.262 & 263 of 2017 in O.S.No.82 of 2010 for fresh disposal, keeping in view of the law declared by the Court.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:29.06.2017

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