

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5652 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful defendant is directed against the order, dated 21.03.2016, of the learned V Additional Senior Civil Judge, Ranga Reddy District, L.B.Nagar, passed in I.A.no.26 of 2016 in O.S.no.406 of 2002.

2. I have heard the submissions of *Sri P.Sadasiva Rao*, learned counsel for the petitioner/defendant ('the defendant', for brevity), *Sri Rupendra Mahendra*, learned counsel for the 1st respondent/1st plaintiff, and of *Sri S.R.Deshmukh*, learned counsel for the respondents 2 to 6/ plaintiffs 2 to 6. I have perused the material record.

2.1 The parties in this revision shall hereinafter be referred to as the defendant and plaintiffs as arrayed in the suit for convenience and clarity.

3. The facts that lead to filing of this revision by the sole defendant, in brief, are as follows:

The plaintiffs brought the suit against the defendant society for eviction and to direct it to deliver to them, the vacant and actual possession of the suit schedule property, i.e., House no.1-55 (old), new no.13-1-55 admeasuring about one acre of land within the compound wall in Sy.No.17 of Bubbuguda village, Balanagar Mandal, more fully described in the schedule annexed to the plaint and for other reliefs. The defendant society is resisting the suit by filing a written statement. In the said suit, the defendant filed an interlocutory application under Order XVI Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity), praying the Court to issue witness summons to Md. Kamaluddin and Munnisa Begum (vendors), & YSR Prasad,

Suresh, B.Susheel Kumar and A.Dharmaiah (purchasers) to give evidence on its behalf. The said application was resisted by the plaintiffs. On merits, the trial Court partly allowed the application and directed issuance of witness summons to Munnisa Begum only, but, dismissed the application partly insofar as the relief for summoning others as witnesses while *inter alia* observing that Kamaluddin died. Therefore, the aggrieved defendant filed this civil revision petition.

4. The facts pleaded and the submissions made on behalf of the defendant, in brief, are as follows:

The suit is filed for eviction. The specific case of the defendant is that the defendant society is in possession of 2733 square yards of land out of Sy.no.17 of Bubbuguda village in which a school building was constructed. The extent of the suit schedule land is one acre. The Court below framed necessary issues on the basis of the pleadings. In order to prove the defence related to the issue no.1, the defendant examined one of its witnesses as DW2 and the suit was posted for further evidence. For proper adjudication, the defendant intended to examine its vendors, that is, Md. Kamaluddin and Munnisa Begum, who are essential witnesses to prove the defence raised in respect of issue no.1. Further, some of the persons constructed permanent structures long time back and house numbers were also allotted to the said buildings. All these structures are in Sy.no.17 of Bubbuguda village, that is, in the property in respect of which the suit is filed for eviction. In order to prove the said facts, the defendant intends to examine the petition listed persons, who raised the constructions in Sy. nos. 17 and 18, as witnesses on its side. Therefore, it is just and necessary to issue witness summons to the aforesaid persons in the interests of justice. Otherwise, the defendant will be put to irreparable loss and hardship.

5. The averments in the counter affidavit filed by the 1st respondent/ 1st plaintiff, in brief, are as follows: 'The relationship of landlords and tenant is not in dispute. The request of the defendant society in the subject petition to issue witness summons to the proposed witnesses need not be considered as the said persons are in no way concerned with the issues settled for determination by the Court below in the instant suit for eviction filed against the defendant. If the defendant or any other persons are having title or right and if they intend to claim any such right/ s, it is open for them to file separate suit/ s. The present petition filed by the defendant is untenable under law and it was filed with an ill motive. One of the proposed witnesses, that is, Kamaluddin died. The defendant is seeking to issue witness summon to a dead person. The defendant filed the subject application only to drag on the matter and to illegally enjoy the suit schedule property. The defendant also filed an application in I.A.No.451 of 2009 under Order I Rule 10 of the Code, seeking impleadment of certain persons, who are no way concerned with the instant suit for eviction. On contest, the said application was dismissed by the Court below. The revision filed against the said order, dated 05.10.2015, was dismissed by this Court. Now, the defendant filed the subject application to issue summons to persons, who are not necessary parties to the instant suit. The suit schedule property is in Survey no.17 situated at Bubbuguda village, Balanagar Mandal, Ranga Reddy District. The defendant society admitted its tenancy under a lease agreement in respect of property in Sy.no.17 only. But, the defendant now intends to take witness summons to certain persons by stating that those persons constructed buildings in the lands covered by Sy.Nos.13 and 18, which are not the subject matters of the present suit. The defendant had not filed any list of witnesses within 15 days from the date of framing of issues. After lapse of 13 years, the defendant society came up with the present application by stating that those persons who raised constructions in the lands in Sy.Nos.13,17 and 18 have to be examined as witnesses on its

side. The defendant knows very well that ownership/ title cannot be decided in a suit for eviction. The defendant is purposely not paying rents and is enjoying the property without any valid title. And, it intends to create multiple litigations. Hence, the petition may be dismissed.'

5.1 The averments in the counter affidavit of the 3rd plaintiff filed on behalf of the plaintiffs 2 to 6, in brief, are as follows: 'The defendant has taken the suit schedule property on lease. The plaintiffs already adduced their evidence in the suit. The defendant already filed the affidavits of Dws 1 and 2 in lieu of their examinations-in-chief and they were cross-examined. With an intention to protract the litigation, the defendant filed the subject petition for issuing summons to the witnesses, that is, its vendors and others by creating false and fabricated documents. In the written statement filed, the defendant has not stated that the said proposed witnesses are in possession of the suit schedule property or any part thereof. In his cross-examination, Dw1 has categorically stated that he has taken the suit schedule property on lease under a lease deed and admitted the contents of the lease deed. When the matter is coming up for further evidence on the side of the defendant, an application for impleadment of third parties was filed. The said petition was dismissed by the trial Court. The said orders of the trial Court were confirmed by this Court. The written statement is silent with regard to constructions, if any, made by the proposed witnesses. The defendant society having taken the property on lease cannot say that fraud was played upon it. The building within one acre of land is surrounded by compound walls and it is admittedly in possession of the defendant. The petition filed with an intention to drag on the proceedings is liable for dismissal.'

6. I have given earnest consideration to the submissions made in line with the pleadings. I have perused the material record.

7. As already noted, by the impugned order, the trial Court partly allowed the petition holding that one of the vendors, Kamaluddin, died and that Munnisa Begum can be summoned as a witness to enable the defendant to substantiate its contentions regarding the purchase of the property by the defendant from her. However, the trial Court also held that the request of the defendant for summoning the other persons mentioned in the petition list for examination of the said persons as witnesses on the side of the defendant need not be considered and accordingly, rejected the request of the defendant in that regard.

8. Learned counsel for the defendant while reiterating the pleaded case of the defendant would further submit as follows: 'The Court below failed to consider that the plaintiffs did not produce any documents in support of their contention that Kamaluddin died. Hence, formal summons ought to have been issued to the said witness. The Court below failed to consider that the defendant society earlier filed a petition *vide* I.A.No.451 of 2009 for impleading the proposed witnesses as defendants 2 to 6 in the suit. In the said interlocutory application the defendant society stated that the suit schedule land is of an extent of Ac.1-00 guntas, but admittedly, it is in possession of 2733 sq. yards in Sy.No.17 of Bubbuguda village, Moosapet, Ranga Reddy District, and that the proposed parties are in possession of the remaining part. The proposed parties filed their counter admitting that they are in possession of part of the suit schedule property being purchasers for valid consideration and that they constructed houses on their respective plots. The said application was dismissed by an order, dated 05.10.2015. The revision filed against the said orders was also dismissed by order, dated 13.11.2015. The said revision was dismissed giving liberty to the defendant to examine the said proposed parties as witnesses on its behalf. The examination of the said witnesses is also necessary for securing additional strength and support to the defendant's case. The Court below failed to appreciate that other witnesses

are crucial witnesses to speak about sale of part of suit schedule property to them during subsistence of lease in favour of the defendant. The plaintiffs wilfully did not implead the necessary parties to the suit for eviction, even though the defendant is admittedly not in possession of the total extent of the suit schedule property. Further, if the proposed witnesses are examined on behalf of the defendant, no prejudice will be caused. The plaintiffs will have ample opportunity to cross examine the said witnesses. The trial Court ought to have allowed the petition in its entirety.'

9. On the other hand, learned counsel for the plaintiffs supported the order of the Court below.

10. I have bestowed my attention to the facts and the submissions.

10.1 In the decision in Shaik Abdul Rasool v. G.Lakshmi Reddy¹, it was held that the witnesses cannot be summoned on the application of the parties and that power to summon witnesses as Court witnesses has to be exercised by the Court on its own accord and not at the instance of the parties to the suit and that the defendants are not entitled to request the Court to summon the witnesses as Court witnesses without leading *prima facie* rebuttal evidence in accordance with their defence in the written statement and discharging the onus upon them.

10.2 Learned counsel for the defendant relied upon the following decisions: (I) Mange Ram v. Brij Mohan and others²; (ii) N.Balraju v. G.Vidhyadhar³; (iii) Kosuru Kalinga Maharaju v. Kosuru Kaikamma⁴; (iv) Addagatla Narendar v. Some Vijayalakshmi⁵; and, (v) National Insurance Company Ltd. v. M/s.

¹ 2011 (1) L.S 60

² AIR 1983 SUPREME COURT 925(1)

³ 2004 (5) ALT 55

⁴ 2002(2) ALT 409

⁵ 2006(3) ALD 94

Susru Sea Foods rep. By its Managing Partner⁶. The above decisions are relied upon in support of the following propositions: 'That filing of list of witnesses is not mandatory and that even in the absence of filing of list of witnesses, any person, who is a material witness, can be summoned at the request of one of the parties and that merely because a list of witnesses is not filed or a witness is not named in such a list filed, the Court cannot decline permission to examine a material witness and that the Court has jurisdiction and power to summon any person including a party to the suit, who is not examined as a witness, and even strangers to the suit, if their examination as witnesses in the suit is necessary for a just decision in the suit and that permitting to let in all admissible evidence is the general rule and rejection thereof, is an exception.' I have carefully gone through the cited decisions. There is no quarrel with the propositions in the cited decisions. Eventually, the cited cases are decided on facts peculiar to those cases.

11. Be that as it may. The prayer in the application of the defendant reads verbatim as under:

"For the reasons stated in the accompanying affidavit, the petitioner/defendant therefore prays the Hon'ble Court may be pleased to issue witness summons to Mr. Md.Kamaluddin, Smt. Munnisa Begum (Vendors), YSR Prasad, Suresh, B.Susheel Kumar and A.Dharmaiah (purchasers) to give evidence and to pass such other orders that this Hon'ble Court may deem fit and proper under the circumstances of the case."

12. Though it appears that by the time the interlocutory application was filed, the defendant society had not let in any evidence on its side, it is now not in dispute that as of now DWs 1 and 2 are already examined on the side of the defendant. The plaintiffs filed the suit for eviction of the defendant from the suit schedule property and other reliefs like arrears of rent, mesne profits, etcetera *inter alia* stating that the defendant is a lessee and that the

⁶ 2005 (1) ALT 297

defendant is making constructions without permission over the open land in violation of terms and conditions of lease. The suit was also instituted after issuance of a notice. The defendant filed a written statement raising various defences. However, the defendant stated in the written statement verbatim as follows:

“The plaintiff no.3 while making false representations with this defendant that he and other plaintiffs are the owners of survey nos.13 to 18 of Babuguda, entered into two separate Lease Agreements with this Defendant on 1.5.1993. After, this Defendant has developed the land by constructing the compound wall around Ac.8.00 guntas and also attended to massive repairs to old building by spending not less than Rs.10,00,000/- (Rupees Ten Lakhs only).

In respect of some land sold by them, the plaintiff has entered into lease with this defendant. It clearly indicated that they are not owners of the property.

In reply to Para-3, it is submitted that two Agreements of Lease were entered into 1.5.1993 as stated above and whereas the Plaintiffs are insisting for Ac.1-00 gts of land out of Survey No.17 while leaving vide vide Sy.No.13 & 18. Immediately, after coming to know about the fraud perpetrated by Plaintiff No.3, this Defendant purchased the property from its lawful owners. Therefore, the payment of rent does not arise. Therefore, Plaintiff No.3 is under obligation to return the amount received by him from this defendant.”

Thus, the defendant admits that at the inception, the transaction between the parties is a lease transaction and that both the parties entered into lease agreements and that the defendant also paid amounts towards rents. However, apart from the above and other contentions, the defendant also stated in the written statement that on enquiries and verification, it came to know certain facts and fraud played by the 3rd plaintiff and that, therefore, the defendant society purchased the suit schedule property from the original

owners. The defendant's request to implead the said vendors of the defendant and some third parties was negated by the trial Court and the said order has become final. Now, when the defendant filed the subject petition seeking permission to summon those proposed parties for examining them as witnesses on its side, the trial Court, having noted that one Kamaluddin died, partly allowed the petition and permitted to examine one of the witnesses, who is said to be one of the vendors of the defendant; but refused to summon other parties for examination as witnesses. The learned counsel for the plaintiffs would submit that once a tenant is always a tenant and that the tenant is estopped from denying the title of the landlords/plaintiffs and that if the defendant wants to deny the title, the defendant must first surrender possession and then deny the title, if he desires so to do. He would further submit that the defendant need not plead the cause of third parties by falsely alleging that they are in possession of a part of the property. It is also submitted that the defendant is only in possession of the suit schedule property and that the defendant society is an education society and that if the defendant society having entered the property under a lease has parted with a part of the property, it is its responsibility to handover vacant possession of the entire leasehold property at the time of execution of the eviction decree and that in view of the settled legal position, it is not necessary to permit to summon any third parties as witnesses or as Court witnesses. The trial Court in its orders noted that five issues were framed and made observations as regards the onus of proof on the relevant issues and also recorded a finding that summoning of other persons as witnesses as sought for by the defendant society is not necessary in view of the pleadings of the parties and the issues settled for determination in the suit. Having thus examined the matter, in detail, this Court is of the considered view that in the facts & circumstances of the case, the well-considered order of the trial Court, which is justified, needs no interference and that there is no illegality or irregularity or impropriety calling

for interference. Accordingly, this Court finds that the revision is devoid of merit and is liable to be dismissed.

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

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

18th December, 2017
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