

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYUJULU

C.R.P. No. 216 of 2013

ORDER:

Heard the learned counsel appearing for the petitioner, and none appeared for the respondents.

2. The grievance of the petitioner is that the impugned order did not consider his averments that his father did not inform him of the summons received by him and thus he did not have an opportunity to participate in the trial.

3. In response to the application filed in I.A.No.1739 of 2012, the contesting plaintiffs, as respondents, filed a counter stating that the present petitioner's own brother filed an I.A., for reopening the matter and to recall two witnesses. In that affidavit, the brother of the petitioner has made a sworn statement to the effect that he is filing the affidavit on his behalf and also on behalf of other petitioners on their instructions. This counter is filed as material paper by the learned counsel for the petitioner.

4. The trial Court has also noticed the fact that the service of the summons was affected on an adult member of the family, when the petitioner was not present. The defendant No.1, who is the father of the present petitioner, has appeared in the trial Court after receipt of summons and filed his written statement.

5. The plea of the petitioner that he has noticed suit summons only on 06.10.2012 while going through 'the hospital/ office desk' is not believable and the petitioner is not clear as to how he has

found the summons. The reasons given in Para-3 of the affidavit in I.A.No.1739 of 2012 are not supported by evidence. The clear averment in Para-6 of the counter filed in I.A.No.1739 of 2010 that the deponent therein (Defendant No.3) swore to the affidavit on his behalf and other petitioners is not rebutted or answered properly also.

6. Irrespective of the above, as per Order V, Rule 15 CPC, service of summons on an adult member of the defendant's family is deemed to be sufficient service, provided they are all residing together. As can be seen even from the cause title in the suit and in present revision petition also, the petitioner and the respondents 3 and 4 are residing together in one house. Therefore, I am of the opinion that the impugned order of the lower Court does not suffer from any defect.

7. Therefore, the revision fails and it is accordingly dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

October 16, 2017
Kv

D.V.S.S.SOMAYAJULU, J.

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