

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.592 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.590 of 2016 in O.S.No.45 of 2003 dated 02.01.2017 passed by the IV Additional District Judge, Tirupati.

I.A.No.590 of 2016 is filed by the respondents under Order XVI Rule 1 r/w Section 151 C.P.C to summon the Area Manager, LICHLF, Tirupati to produce the original registered sale deed dated 21.02.1994 said to have been executed by one Damera Sarojini Devi in favour of one T. Sudhakar, father of respondents 9 & 10 in the suit in respect of a portion in item no.2 of plaint schedule property to an extent of 420 sft and to adduce evidence on their behalf. It is alleged that O.S.no.45 of 200 is filed for cancellation of registered sale deed on various grounds and the original document is necessary for deciding the real controversy, since the plaintiffs are contending that it is a forged and fabricated document. Therefore, unless the original is produced before the Court, it is difficult to establish the case of either the plaintiffs or the defendants and come to just conclusion by the Court. The respondents opposed the contention by filing counter.

However, the Trial Court dismissed I.A.No. 590 of 2016 on the ground that the proposed witnesses are not shown in the list of witnesses and therefore, they cannot be summoned as witnesses, since Order XVI Rule 1 is applicable to the witnesses shown in the list. Aggrieved by the order in I.A.No.590 of 2016, the present civil revision petition is filed.

The only reason assigned by the Trial Court is that the Area Manager, LIC, is not a witness shown in the list of witnesses in a petition filed under Order XVI Rule 1 C.P.C.

Order XVI Rule 1 C.P.C. deals with List of witnesses and summons to witnesses.

Sub-rule (1) mandates that on or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in Court.

Sub-rule (2) a party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

Similarly, Sub-rule (3) the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

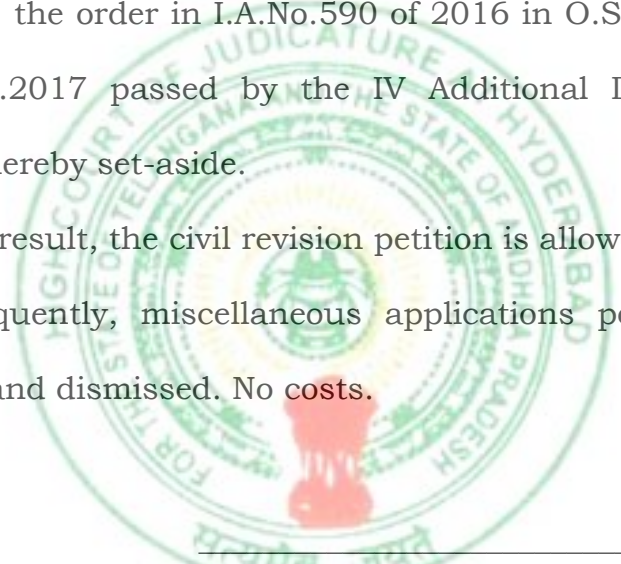
Thus, Sub-rule (3) of Rule 1 of Order XVI C.P.C permits the Court to summon any person other than whose name appeared in the list of witnesses, if the Court finds any reason for summoning such witnesses. Therefore, discretion is conferred on the Court to meet the different kinds of situation to summon the witnesses.

Dismissing the application by ignoring Sub-rule (3) of Rule 1 of Order XVI C.P.C is an error apparent on the face of record in the order passed by the Trial Court. Therefore, the reason assigned by the Trial Court for dismissal is not sound, since the petitioners contended that the original document is necessary, as the suit was filed for cancellation of sale deed, on the ground that it was forged or fabricated. Unless, the original document is produced before the Court, it is difficult to decide whether the original sale deed was really executed by one Damera Sarojini Devi in favour of one T. Sudhakar or not.

Hence, the order in I.A.No.590 of 2016 in O.S.No.45 of 2003 dated 02.01.2017 passed by the IV Additional District Judge, Tirupati, is hereby set-aside.

In the result, the civil revision petition is allowed.

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



JUSTICE M. SATYANARAYANA MURTHY

Date:18.07.2017

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