

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.55 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, assailing the order, dated 22.12.2016, of the learned Senior Civil Judge, Tadepalligudem of West Godavari District, passed in I.A.No.1415 of 2016 in O.S.No.200 of 2005.

2. I have heard the submissions of Sri P.Sriram, learned senior counsel appearing for the petitioner/plaintiff. The respondents are served with notices and entered appearance. The vakalt of the Executive Engineer of the A P Housing Board is on record. Hence, after hearing the submissions of the learned senior counsel appearing for the petitioner/plaintiff, the matter was adjourned twice for hearing the submissions, if any, of the learned Standing Counsel for the 1st respondent/A.P.Housing Board. Despite adjourning the matter twice, there was no representation for the official respondents and no submissions are made on their behalf. I have perused the material record.

3. The facts of the case, which are required to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the A.P.Housing Board and the other defendants for declaration that the notification issued by the 2nd respondent on behalf of the 1st respondent for sale of plaint 'B' schedule property is illegal and for other reliefs. The 2nd defendant is contesting the suit. In the

pending suit, the plaintiff filed the afore-stated interlocutory application, under Section 151 of the Code of Civil Procedure, 1908, requesting the Court to direct the Commissioner of Survey, Settlements and Land Records, Narayanaguda, Hyderabad, to produce the following documents:

1. Maps of Town survey of Tadepalligudem Town area of
 - (i) Ward No.1, I Block with ladder; and
 - (ii) Ward No.1 K Block with ladder
2. G.O. by which the survey was published at Page 134 by the District Gazette (Extraordinary) of West Godavari District, dated 27.05.2008.
3. Comparative statement showing the R.S.Nos. and corresponding survey numbers of Tadepalligudem Town in particular Kadakatla revenue villages and give evidence.

[Reproduced verbatim from the pleadings]

The said application was resisted by the 2nd defendant by filing a counter. On merits and by the order impugned in this Revision, the trial Court dismissed the petition. Aggrieved thereof, the plaintiff is before this Court.

4. The case of the plaintiff, in support of the afore-stated request in the said application, in brief, is this:

‘There is a stray piece of land adjacent to the land of the plaintiff; and, it is shown as ‘B’ schedule. The extent of the said stray piece of land is less than 100 square yards. Therefore, the respondents 1 and 2/defendants 1 and 2 are liable to sell the same to the plaintiff. The defendants 1 and 2 raised a defence in the suit that the said piece of land shown in ‘B’ schedule is of an extent of 174 square yards. An advocate commissioner was appointed at the instance of the plaintiff to measure the land in

dispute with the assistance of a surveyor. The Commissioner's report reflects that the disputed land is of an extent of 31.10 square yards. The Commissioner was examined as PW2 and the Inspector of Survey Settlements and Land Records is also examined as PW3. Both of them referred to the town survey records, which were referred to and relied upon, while executing the Commissioner Warrant. Since there is a dispute about the extent of 'B' schedule property in question and its extent would be borne out by the records, which are in the office of the Commissioner of Survey, Settlements and Land Records, Narayanaguda, Hyderabad, the plaintiff is constrained to file the petition to direct the said authority to produce the said records, which are stated in the petition of the plaintiff.'

5. Per contra, the case of the 2nd defendant, as stated in the counter, in brief, is as follows:-

'The Commissioner as well as the Inspector of Survey, who were examined as PWs 2 and 3, gave evidence in the suit. PWs 2 and 3 never proceeded to measure the disputed property with the help of FMB as no survey stones as per FMB are available. They measured the disputed property as per Town Survey records only. The town survey records are in the custody of the Municipality. There is no necessity to summon the records from the office of the Commissioner of Survey, Settlements and Land Records, Narayanaguda, Hyderabad.'

6. At the hearing, the learned counsel for the petitioner/plaintiff would submit as follows: 'In view of the

serious dispute about the extent of 'B' Schedule land and as the A.P.Housing Board and Government are also parties to the suit and as the extent of the 'B' schedule property would be borne out by the public records, the said records as sought for by the plaintiff, if produced into Court would assist the Court in effectively adjudicating the issues involved in the suit and in resolving the dispute once and for all. In spite of the fact that there is a Commissioner's report supporting the case of the plaintiff, the defendants 1 and 2 are saying that no survey stones are available as per FMB and survey was conducted as per Town Survey records. The plaintiff is entitled to prove his case by placing reliance on the public records, which is the best evidence. When the plaintiff made efforts to obtain the certified copies of the documents, the same were not granted. Since the documents are public records, if they are directed to be produced, no prejudice would be caused to the contesting defendants and on the other hand, they would be of immense help to the Court in adjudicating the *lis* and in appreciating the commissioner's report and other evidence already let in by the parties to the *lis*.'

7. As already noted, this Revision Petition is not being opposed by the defendants, though they are served with the notices and entered appearance.

8. In the well considered view of this Court, the respondents, that is the defendants to the suit, being the A.P.Housing Board and the Government, the said defendants are required to

produce before the Court the public records available in a Public Office even without the plaintiff asking for production of the same, they being the custodians of the public records. They are required to do so, more particularly, when they are disputing the extent of 'B' schedule property, which is said to be adjacent to the land of the plaintiff. As per the settled legal position and as per the provision of Section 106 of the Indian Evidence Act, 1872, irrespective of the principle enshrined in the Doctrine of Onus of Proof, a party having possession of the best evidence is required to produce the same. The Supreme Court has consistently emphasized that it is the duty of the party which is in possession of a document, which would be helpful in doing justice in the cause, to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. [See: Sushil Kumar vs. Rakesh Kumar (16.10.2003 - SC)]. Non-production of such document would again give rise to drawal of an adverse inference to the effect that had such document been produced, the same would have gone against the interest of the party who had not produced the document. In that view of the matter, the plaintiff, in the well considered view of this Court, is justified in asking for production of the records, which are aforementioned, and hence, the order impugned of the trial Court refusing to grant the request of the plaintiff to direct the production of records as sought for by the plaintiff is unsustainable. On the above analysis, this Court finds that the request of the Revision petitioner/plaintiff merits consideration.

9. In the result, the Civil Revision Petition is allowed and the order, dated 22.12.2016, of the learned Senior Civil Judge, Tadepalligudem of West Godavari District, passed in I.A.No.1415 of 2016 in O.S.No.200 of 2005 is set aside. As a sequel, I.A.No.1415 of 2016 is allowed, as prayed for. The trial Court shall accordingly issue witness summons to the Commissioner of Survey, Settlements and Land Records, Narayanaguda, Hyderabad, to produce through a competent officer, the original records mentioned in the petition of the plaintiff along with duly attested true copies of the same, on the plaintiff depositing the necessary expenses, as may be determined by the trial Court, for preparation of certified copies of the relevant portion of the material record that may be produced to facilitate marking of the certified copies and return of the original records that may be produced. It is needless to state that on non-production of the subject documents, the trial Court shall be at liberty to draw an adverse inference to the effect that had such documents been produced, the same would have gone against the interest of the defendants, provided the facts of the case warrant drawal of such an adverse inference.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. Seetharama Murthi, J

12th September, 2017
Bvv