

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5771 OF 2016

ORDER:

This petition is filed challenging the order passed in I.A.No.242 of 2016 in O.S.No.30 of 2015 dated 16.08.2016 passed by the Judge, Family Court-cum-IV Additional District and Sessions Judge at Adilabad, dismissing the petition filed under Order V Rule 20 C.P.C.

It is the contention of the petitioner before the Trial Court that the petitioner filed a suit for partition against the respondents/defendants. Summons were ordered to defendants 1,2 & 4. Though summons were sent to the last known address where 2nd defendant was residing, summons could not be served on him. As the summons was returned, he contended that the 2nd respondent/defendant was intentionally avoiding to receive summons and sought for substitute service by publication in any leading Telugu daily newspaper circulated in Nirmal area.

Defendants 1 filed their counter affidavits contending that the 2nd respondent is not residing at Sainikpuri, Secunderabad, which is the address mentioned in the cause title of plaint, but he is residing at U.S.A, which is specifically mentioned in paragraph 2 of the written statement, therefore, notice by substitute service cannot be ordered.

During hearing, learned counsel for the petitioner reiterated the same contention which he advanced before the Trial Court while requesting the learned counsel for the respondent to furnish

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the correct address enabling him to send notice to the address at United States of America.

As seen from the material on record, summons were ordered by the Court for service on the 2nd respondent. But, they were returned unserved.

Order V Rule 20 deals with Substituted service and (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house [if any] in which the defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit.

(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain (2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally. Where service substituted, time for appearance to be fixed.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require. High Court Amendments

The language used under Clause (1) Rule 20 Order V is clear that when a party is keeping out of the way for purpose of avoiding service, or that for any other reasons summons cannot be served in the ordinary way, the Court can order summons to be served by substitute service. Here, the learned counsel for the respondent contended that the 2nd respondent is residing at United States of America without disclosing any details, more particularly, the address enabling the petitioner to serve notice. In such circumstances, satisfaction of the Court is sufficient to order notice to the effect that defendant is keeping out of the way for the purpose of avoiding service, the summons could not be served, the Court can order substitute service. Therefore, dismissal of the application on the bald plea that the 2nd respondent is residing at United States of America is an erroneous approach by the Trial Court and the Trial Court should have exercised its discretion by issuing summons by substitute service. When the Trial Court assumes jurisdiction erroneously in exercise of power, this Court by the inherent powers vested on it can exercise revisional jurisdiction under Article 227 of the Constitution of India. Since the scope of revision under Article 227 is limited to find out whether the order under challenge is passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within

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the bounds of their jurisdiction and not to allow them to transgress from their jurisdiction, but not otherwise.

It is evident from the record that inspite of sending summons for five times, summons on the 2nd respondent were not served. However, if summons were not served, for any other reason, as contemplated under Order V Rule 20 Clause (1), the Court can order for service by substitute service. Hence, the order passed by the Trial Court is erroneous and the Trial Court failed to exercise its discretion that vested on it and the order under challenge is hereby set-aside, directing the Trial Court to order service of summons by substituted service in any leading Telugu daily newspaper circulated at the address where the 2nd respondent/defendant is known to be last residing or last working.

With the above observation, the civil revision petition is allowed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:08.06.2017

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