

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.427 OF 2018

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 21.09.2017 passed by the learned IX Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.839 of 2017 in O.S.No.363 of 2015. The said suit was filed by the petitioners herein for a perpetual injunction restraining the defendants from interfering with or in any way trespassing into the suit schedule A and B plots in Survey No.62 part, Madhapur Village, Serilingampally Mandal, Ranga Reddy District. While so, the first defendant in the suit filed I.A.No.839 of 2017 therein under Order 16 Rule 15 CPC to summon the plaintiffs and their GPA holder to depose about the alleged GPA and to direct the GPA holder to produce the alleged original GPA before the Court. In the affidavit filed in support thereof, the first defendant stated that upon his enquiries, he came to know that the GPA holder had executed documents in favour of various people and therefore, the plaintiffs in the suit did not have the *locus* to maintain the suit. He further stated that his enquiries revealed that the whereabouts of the plaintiffs were not known for the past several years and some of the plaintiffs had expired. Pointing out that the original GPA had not been filed, indicating that it was fabricated, he asserted that it was just and necessary to summon the plaintiffs to give a statement about the alleged GPA executed by them and to verify its authenticity by directing its production.

The trial Court passed the order under revision, stating as follows:

'Counsel for other Respondent/Defendant No.2 and Defendant No.3 reported to have received notice and reported no counter. Counter

of Respondents/Plaintiffs is not filed. No representation till 5PM. Cost not paid. Respondents/Plaintiffs are set ex-parte.

Heard counsel for petitioner. Perused the petition and record. Petition is allowed for the reasons stated in the interest of justice.'

Aggrieved thereby, the plaintiffs in the suit preferred this revision.

While ordering notice before admission on 21.05.2018, this Court passed the following order in I.A.No.1 of 2018 filed in the CRP:

'Sri A.Narasimha Rao, learned counsel for the petitioners/ plaintiffs, would submit that a copy of the subject I.A was not even served upon his clients or his counterpart in the Court below but despite the same the trial Court recorded that the plaintiffs in the suit had not filed their counter and that there was no representation on their behalf. That apart, learned counsel would submit that the suit is still at the stage of framing of issues and the question of summoning the plaintiffs themselves to appear and produce the documents at this stage would not arise.

Perusal of the docket order under revision reflects that the trial Court did not even deem it proper to record reasons for allowing the I.A. except for stating that the plaintiffs had not filed their counter. Surprisingly, the trial Court also set them *ex parte* !

There shall accordingly be interim stay as prayed for.'

Heard Sri M.V.S.Suresh Kumar, learned senior counsel representing Sri A.Narasimha Rao, learned counsel for the petitioners, and Sri P.Raghavendra Reddy, learned counsel representing M/s. Bharadwaj Associates, counsel for the first respondent-first defendant. Respondents 2 to 4, being the other defendants in the suit, are not contesting parties and therefore, no opportunity of hearing need be afforded to them.

Parties shall hereinafter be referred to as arrayed in the suit.

Though the plaintiffs assert that they were not even served a copy of the subject I.A., Sri P.Raghavendra Reddy, learned counsel, would point out that a counter was filed by them in the said I.A. A copy thereof is placed on record. It is to be noted that the said counter was deposited

to on 14.11.2017, long after the order dated 21.09.2017 was passed in the I.A. There is no material placed before this Court in evidence of service of the I.A. upon the plaintiffs or their learned counsel.

Be that as it may.

Surprisingly, the trial Court did not even record reasons for allowing the subject I.A. Sri M.V.S.Suresh Kumar, learned senior counsel, would point out that issues are yet to be framed in the suit and assert that it was wholly premature for the trial Court to direct the plaintiffs to depose at this stage. Learned senior counsel would point out that under Order 14 Rule 4 CPC, the trial Court is empowered to compel attendance of any person or production of any document if it is of the opinion that issues cannot be correctly framed without examination of such person or without inspection of such document. However, as rightly pointed out by the learned senior counsel, that was not the situation obtaining in the case on hand, as the affidavit filed in support of I.A.No.839 of 2017 demonstrated that the first defendant merely doubted the veracity of the alleged GPA executed by the plaintiffs. He also suspected that some of them had died. As to whether this enquiry could have been undertaken by the trial Court even before framing of the issues is the point.

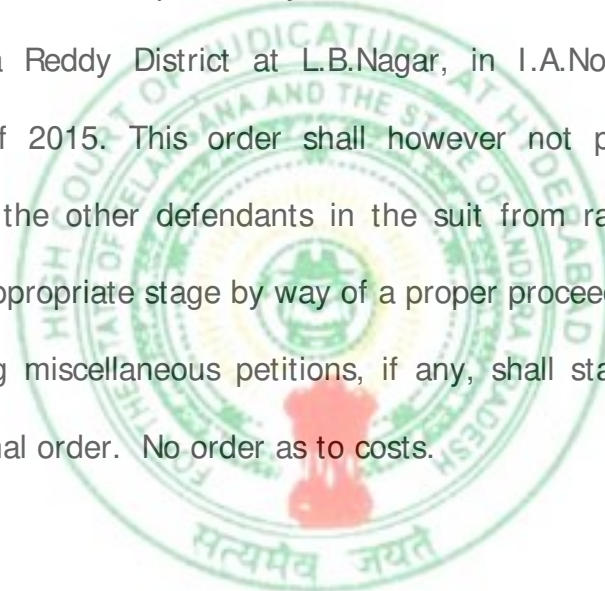
It is always open to the party concerned to request the trial Court to frame a preliminary issue under Order 14 Rule 2 CPC, if it goes to the root of the matter. However, the first defendant chose to file an application under Order 16 CPC to compel the attendance and examination of the plaintiffs and their GPA holder. To begin with, Order 16 Rule 1 CPC makes it clear that it is only after the issues are settled that the parties are required to present their respective lists of witnesses in Court. Order 16 Rule 15 CPC deals with the duty cast upon the summoned

witness to attend and produce the document that he was directed to produce. This provision had absolutely no application in the case on hand.

Further, it is to be noted that having directed the plaintiffs in the suit to present themselves for examination, the trial Court strangely set them *ex parte* in the I.A! This Court is at a loss to understand the connotations of this action on the part of the trial Court. Viewed in its totality, the order under revision therefore has no legs to stand upon, factually or legally.

The civil revision petition is accordingly allowed setting aside the order dated 21.09.2017 passed by the learned IX Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.839 of 2017 in O.S.No.363 of 2015. This order shall however not preclude the first defendant or the other defendants in the suit from raising the subject issue at the appropriate stage by way of a proper proceeding.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



27th APRIL, 2018

Sv

SANJAY KUMAR, J