

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.261, 267 & 327 of 2018

COMMON ORDER:

These three Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging the Orders dt.19.12.2017 in I.A.Nos.1978, 1979 and 1980 of 2017 in O.S.No.28 of 2010, whereby the petitions filed for reopening of the case, summoning of the documents and referring the disputed signatures on Ex.B.1 along with the admitted signatures to expert were dismissed.

The petitioner filed O.S.No.28 of 2010 for various reliefs including the declaration of title to the schedule property and to deliver vacate possession of the suit schedule property, but the defendant set up a claim based on Ex.B.1-agreement of sale. The petitioner filed I.A.No.1978 of 2017 to reopen the evidence of the petitioner/plaintiff and I.A.No.1979 of 2017 for issuance of summons to Tahsildar, Kalluru, for production of original pahanies for the years 1996-1997 to 2016-2017 pertaining to land in Sy.No.144/4A to an extent of Ac.6.32 guntas of Laxmipuram Village of Kalluru Mandal and to give evidence. I.A.No.1980 of 2017 is filed to refer disputed signatures on Ex.B.1 to the expert as the defendant set up Ex.B.1-agreement of sale and its execution was denied by the petitioner while contending that it is a forged document. It is alleged that the pahanies produced by the defendant before the Court are certified copies, whereas the petitioner obtained true copy of the pahani of the relevant years referred supra and found certain interpolations in the Adangal Register and there is a correction in column No.14, but the said true copy was not produced before the Court and no explanation was given for correction of the entries in the original of Adangal Pahani for

various relevant years i.e., 1995-1997 and as such, the original pahanai register is necessary for deciding the real controversy and what made the revenue authorities to make such corrections, which decides the crucial issue regarding the cultivation and possession of the property.

It is further contended that during cross examination of witness, it is noticed that the certified copies of the Pahanies produced before the Court by the defendant is not the exact true copies of the Adangals for the relevant years and therefore, it is necessary to reopen the case enabling this petitioner to mark the original Adangal Pahani to prove his positive case by adducing satisfactory evidence enabling the Court to decide the real controversy between the parties and to reopen the case.

The respondent filed Counter denying the material allegations *inter alia* contending that the plaintiff did not produce the pahani pertaining to the year 1996, whereas he produced pahanies for the years 1997-98 to 2007-08, which were marked as EXs.B.8, B.31, B.32 and B.33, while asserting that the respondent herein is in possession and enjoyment of the subject property. It is also alleged that on 29.01.2003, the plaintiff filed an application before Mandal Revenue Officer, Kalluru, for incorporation of his name in the pahanies vide R.C.No.7/8/2003 and thereafter the Mandal Revenue Officer, passed Order on 18.03.2006 holding that the respondent herein/defendant was in actual possession and enjoyment of the property and the name of the petitioner herein cannot be incorporated and that the plaintiff did not take any steps to get the certified copies of the pahanies for the years from 1996-97 to the date of filing the suit and the present petitions are filed to protract the proceedings for some more time and prayed for dismissal of the petitions.

Upon hearing argument of the counsel, the trial Court dismissed all the three petitions assigning various reasons. The petition for summoning of the witness viz., the Tahsildar, Kalluru, to produce original Adangal Pahani register for the relevant years on the ground that in the earlier suit the petitioner filed a petition to refer the document marked as Ex.B.1 to the expert for comparison and opinion and the respondent herein/defendant readily reported no objection to refer the disputed signatures along with admitted signatures to the expert and for calling for report, but for the reasons best known to the plaintiff and when he failed to avail the opportunity in the earlier round of litigation, this petitioner is not entitled to claim relief under Section 45 of the Evidence Act and dismissed the petition.

The other ground for dismissal of the petition under Order 16 Rule 1 CPC is that the copies of Adangal were already produced before the Court and the same was marked as Exs. B.8, B.31, B.32 and B.33 and when the certified copies of the Adangals were produced before the Court, the originals need not be summoned and dismissed the petition.

Aggrieved by the common order dt.19.12.2017, these three revision petitions are filed before this Court raising several contentions mainly on the ground that true copy of Andagal Pahani obtained by the petitioner discloses certain interpolations in the original register and the interpolations were effected without any order from competent authority and to prove the said interpolations, the original register is to be marked and therefore, sought for summoning the documents of Adangal Pahani for the years 1996-97 to 2016-17 pertaining to the land in Sy.No.144/4A to an extent of Ac.6.32 guntas of Laxmipuram village of Kalluru Mandal and to summon Tahsildar, Kallur to give evidence based

on such documents, but the trial Court on erroneous appreciation of evidence rejected his request and committed an error.

It is further contended that the trial Court dismissed the petition on the ground that no contemporaneous signatures of the petitioner/plaintiff were not available to refer the disputed signatures on Ex.B.1 along with admitted signatures on any authenticated contemporaneous document and apart from the non availing of the opportunity in the earlier suit filed for injunction simplicitor is another strong circumstance and dismissed the suit, but this approach is incorrect as the document containing contemporaneous signatures is readily available in the court itself, which was marked as exhibit, but the trial Court, on erroneous appreciation, without considering the scope of trial in the suit filed for injunction simplicitor and dismissed the petition and dismissal of the application for reopening is only a consequence thereof. Thus, the trial Court committed serious error in dismissing the petition and prayed to set aside the order dt. 19.12.2017 in I.A.No.1979 of 2017.

During hearing, learned counsel for the petitioner would draw the attention of this Court to various corrections carried out in the Village Account No.3/ Adangal Pahani for Kalluru village pertaining to the land in Sy.No.144/AA to an extent of ac.6.32 guntas to establish that the name of the defendant is muted without any order from the competent authority and unless the originals are summoned, it is difficult to establish his case, but the trial Court did not appreciate this contention. Similarly, non availability of his authenticated document containing contemporaneous signatures to send disputed signatures on Ex.B1 along with other admitted signatures of the plaintiff/petitioner on the

documents marked as exhibit is an erroneous on the face of the record and prayed to set aside the Orders in all these three petitions.

The learned counsel for the respondent/defendant supported the orders in all respects while requesting to dismiss these three petitions.

Considering the rival contentions and perusing the material available on record, the points that arise for consideration are:

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- (1) Whether the Tahsildar, Kalluru be summoned for production of phanaies pertaining to Sy.No.144/AA for an extent of Ac.6.32 guntas of Laxmipuram Village of Kalluru Mandal and to give evidence ?
 - 2) Whether the disputed signature on Ex.B.1 along with the admitted signatures be sent to an expert for his opinion ?
 - 3) whether the evidence of plaintiff be reopened ?

POINT NO:1: The first and foremost contention of the learned counsel for the petitioner is that without any order from the competent authority Adangal Pahani for the years 1996-97 to 2016-17 pertaining to Sy.No.144/AA were altered, mutating the 3rd party, the defendant herein, in column No.12 and 13. But, the defendant already produced certified copies of those documents, which are marked as Exs. B.8, B.3, B.32 and B.33 and the same do not disclose corrections carried out in the Adangal Pahani for the relevant years, but whereas the true copy obtained by the petitioner discloses correction of the names without any initial or without any order. But, such fact cannot be decided based on the certified copies i.e., Exs.B.3, B.31 to B.33 produced by the defendant.

According to Rule 129 of Andhra Pradesh Civil Rules of Practice and Circular Orders,” summons for the production of records in the

custody of the Public Officer other than a Court shall be in Form No. 23 and shall be addressed to the Head of the office concerned and in the case of a summons to a District Registrar or a Sub-Registrar of Assurances, it shall be addressed to the Registrar or Sub Registrar in whose office, or sub-office, as the case may be, the required records are kept, but this is always subject to Rule 130 which deals with production of copies of public documents. When a party to the suit or proceeding seeks to obtain a certified copy of a public document for being filed into court in that suit or proceeding, he may apply to the Court wherein the suit or proceedings is pending, for the issue of a certificate to enable him to obtain such copy from the appropriate authority, and the court shall, on being *prima-facie* satisfied that the production of the certified copy in the suits or proceedings is necessary, the Court shall issue a certificate to that effect. In normal course when a person applied for certified copy before public authority and no certified copies were issued, the party can approach the Court where the suit is pending, in view of the Rule 130 of the Rules framed under A.P. Civil Rules of Practice. But, as per Rule 129 (2), every application for such summons shall be made by an affidavit setting out the document or documents the production of which is require; the relevancy of the document or documents and in cases where the production of certified copy would answer the purpose when an application was made to the appropriate officer for certified copy or copies and the result of such application. Thus, it means when certified copy would answer the purpose, then certificate under Rule 30 can be obtained. But, such certified copy would not serve the purpose, the Court shall summon the original under Sub Rule 3 subject to Rule 129 of the Rules, recording reasons requiring the applicant to deposit into the Court before summons were issued charges for such certificate and on production of such document, the Court shall obtain certified copy and

got returned the original to the concerned officer under due acknowledgment.

In the present facts of the case, the certified copies produced by the defendant marked as Exs. B.1, B.31 to B.33 would not serve the purpose because those certified copies are not reflecting the amendments or alterations in the Adangal Pahanai Register, but the true copy obtained by the petitioner discloses the alterations in the document, but whether such alteration is based on an order passed by the competent authority is a question to be decided. Therefore, production of original is necessary for deciding the real controversy and the examinations of Tahsildar, who is having custody of those books is imperative to decide the real controversy between the parties. Therefore, original of Adangal Pahanai pertaining to Sy.No.144/AA to an extent of Ac.6.32 guntas of Laxipuram Village of Kalluru Mandal is necessary to decide the real controversy in view of the alterations in the concerned record without any order allegedly. But the trial Court dismissed the applications on erroneous appreciation of facts based on the certified copies produced by the defendant under Exs. B.8, 32 to 33 without considering the Civil Rules of practice, more particularly, Sub Rule (3) and (4) of Rule 129 of the Rules framed under A.P. Civil Rules of Practice and passed the impugned Order and committed grave error. Hence, the order of the trial Court in I.A.No. 1979 of 2017 is set aside directing the trial Court to issue summons, by exercising power under Section 16 Rule 1 CPC, to Tahsildar, Kalluru for production of original Adangal Pahanai register for the years 1996-97 to 2016-2017 pertaining to Sy.No.144/AA to an extent of Ac.6.32 guntas of Laxmipuram Village of Kalluru mandal. Accordingly, the point is answered.

POINT Nos.2 and 3 : The petitioner filed the suit for declaration of title and recovery of possession, but the defendant set up an agreement of sale to claim benefit under Section 53-A of Transfer of Property Act on the ground that he is in possession and enjoyment of the property in pursuance of the agreement of sale marked as exhibit, but the plaintiff denied the very execution of the document itself. The plaintiff earlier filed another suit for injunction simplicitor and the same was dismissed as observed by the trial Court in para No.14 and the plaintiff/petitioner herein sought for an identical relief in the earlier suit and despite no objection reported by the defendant, the plaintiff did not take steps to refer the disputed signatures on Ex.B.1 to the expert along with the admitted contemporaneous signatures on the documents.

In a suit filed for injunction simplicitor, the scope of trial is limited and the Court is required to record its findings as to who is in possession and enjoyment of the property as on the date of filing the suit and his continuation in possession of the property till determination of the lis pending before the Court. Even if the agreement is not genuine, when the defendant therein was able to prove that he is in continuous possession and enjoyment of the subject property, the suit of the plaintiff is liable to be dismissed. Therefore, no purpose would be served even if the disputed signatures on Ex.B.1 in a suit for bare injunction is referred to an expert along with contemporaneous admitted signatures on the authenticated documents of the defendant/respondent. Therefore, failure to take steps to refer the disputed signatures on Ex.B.1 on the earlier suit would not debar the plaintiff/petitioner now to take steps to refer the disputed signatures on Ex.B.1 along with contemporaneous admitted signatures on the authenticated document to the expert for his opinion on examination of the handwriting. There is no limitation to take such steps, but, this Court made it clear that at any stage of the

proceedings, disputed signatures can be referred to the expert along with contemporaneous admitted signatures calling for his opinion.

The main reason for dismissing the petition was that no contemporaneous admitted signatures of the petitioner are available to refer the disputed signatures of Ex.B.1 for comparison and opinion by the expert relying on the principle in *Palle Chakrapani v M. Prathap Reddy*¹, but the counsel for the petitioner contended that contemporaneous admitted document is available on record, which is marked as exhibit before the trial Court containing the signatures of the plaintiff/respondent herein enabling the expert to compare the disputed signatures along with contemporaneous document. Therefore, dismissal of the petition on the ground of non-availability of contemporaneous document is not a ground to dismiss the petition as the contemporaneous document containing the admitted signatures of the plaintiff is already marked as exhibit before the trial Court and therefore, the conclusion arrived by the trial Court are erroneous and therefore, the Order of the trial Court is hereby set aside directing the trial Court to refer the disputed signatures on Ex.B.1 (disputed signatures) along with the contemporaneous admitted signatures on Plaint and Vakalat of the plaintiff and so also on the signatures available on the contemporaneous authenticated document which was marked as exhibit before the trial Court.

In view of the findings on Point Nos. 1 and 2, the evidence of the plaintiff has to be reopened for further evidence i.e., to examine the Tahsildar for production of Adangal Pahani for the years 1996-1997 to 2016-2017 pertaining to land in Sy.No.144/4A to an extent of Ac.6.32 guntas of Laxmipuram Village of Kalluru Mandal and for the purpose of

¹ 2017(5) ALD 4

examining the expert on receipt of any opinion on reference of disputed signatures on Ex.B.1 and admitted signatures on Plaint and Vakalat and the document marked as exhibit containing the admitted signatures of the petitioner. Accordingly, the evidence of the plaintiff is reopened and the point is answered in favour of the petitioner and against the respondent.

In view of the finding recorded on Points No.1 to 3, these three revision petitions are allowed setting aside the Common Order dt.19.12.2017 in I.A.Nos.1978, 1979 and 1980 of 2017 in O.S.No.28 of 2010 passed by the Principal District Judge, Khammam. However, the trial Court is directed to dispose of the suit in accordance with law immediately on receipt of the opinion from the expert on reference of the disputed signatures on Ex.B.1 along with the admitted signatures on Plaint and Vakalat, so also the authenticated contemporaneous document marked before the trial Court within 30 days from the date of receipt of such report and if for any reason after receipt of the report, the parties did not evince interest in prosecuting the case, the trial Court is directed to dispose of the suit in accordance with law.

As a sequel, miscellaneous applications pending, if any, in these cases, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 02-05-2018

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