

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.1000 OF 2018

ORDER:

Heard Mr.S.M.Rafee, learned counsel for revision petitioner and Mr.Shashank, holding for Mr.K.S.Murthy, learned counsel for respondents.

The revision presents a very short point for consideration. But learned counsel Mr.S.M.Rafee tried to persuade the Court in different combinations on contentions and submissions. A few of them are briefly adverted to.

The admitted and undisputed circumstances necessary for disposing of the revision are stated thus:

The parties herein are working out their alleged rights of partition of plaint schedule properties in O.S.No.77 of 2013. The revision petitioner/defendant No.1 is relying on Proceedings No.3750/2002 dated 24.07.2002 followed by the issue of passbook, title deed and the extract from 1-B register to contend that respondents 1 to 4 herein have substantially given up their right to the plaint schedule property inasmuch as the revision petitioner accepted the responsibility of discharging the liabilities left behind by the father of revision petitioner and respondents 1 to 4 herein. The case of revision petitioner is that in view of the oral partition that resulted in a declaration by way of affidavit before the revenue authorities on factum of partition, the suit for partition is not maintainable. The affidavit of revision petitioner, no doubt, discloses the saga of

revision petitioner in getting the certified copies and/or summoning the Tahsildar for producing the record. Be that as it may, the instant application is filed under Rule 129(6) of the Civil Rules of Practice, which reads as follows:

“Nothing in the above rules prevent a Court of its own motion from issuing a summons for the production of public records or other documents in the custody of a Public Officer in accordance with sub-rule(1), if it thinks it necessary for the ends of justice to do so. The Court shall, in every case, record its reasons in writing”.

The application was resisted and the learned trial Judge through the order impugned in the revision rejected the prayer. Hence, the revision.

Mr.S.M.Rafee contends that the trial Court committed jurisdictional error inasmuch as the trial Court tested the instant prayer made under sub-rule (6) of Rule 129 by the requirements under sub-rule (2) of Rule 129 of the Civil Rules of Practice. According to him, the jurisdiction exercised by the trial Court under sub-rule (1) is to meet the ends of justice and in such circumstances testing the case of revision petitioner with the requirements of sub-rule (2) of Rule 129 is unsustainable. According to him, the order impugned in the revision does not whisper about the scope, object and purpose of sub-rule (6) of Rule 129 of the Civil Rules of Practice. Therefore, he prays for setting aside the order impugned in the revision and allow the same.

Mr. Shashank, appearing for respondents 1 to 4, contends that the revision petitioner cannot equate his request to that of the discretion the trial Court exercises under sub-rule (6) of Rule 129. The jurisdiction conferred on the trial Court by sub-rule (6) is to meet the ends of justice which the Court exercises in rarest of rare cases. According to him, unless and until the revision petitioner satisfies all the three requirements in sub-rule (2), the revision petitioner is not relieved by referring to sub-rule (6). Therefore, the prayer cannot be considered. The prayer, if accepted, virtually amounts to the Court inviting proof of the documents relied on by the revision petitioner. The procedure results in prejudice to the contesting parties. He relies on the decision of this Court in **VOODA VENKATA RAO AND OTHERS v. VOODA SURYA RAMU@ SURYA RAO AND OTHERS**¹.

I have carefully perused the record, particularly the affidavit filed in I.A.No.710 of 2017 and the order of the trial Court.

The revision petitioner for all purposes prays for summoning the records referred in the petition filed in I.A.No.710 of 2017. The revision petitioner when summons documents, the application is considered by the trial Court as an application filed by a party. The Court under those circumstances even if sub-rule (6) of Rule 129 is stated in the application, still the revision petitioner herein cannot ignore requirement satisfied while summoning the documents from

¹ 2016(6) ALD 59

the custody of public offices. It is well settled that quoting wrong provision is no ground to refuse the relief. At the same time, quoting a provision which confers exclusive discretion and power on the trial Court to exercise in exceptional circumstances cannot be understood as relieving the revision petitioner from satisfying the Court the requirement stipulated in sub-rule (2) of Rule 129 of the Civil Rules of Practice. This Court cannot ignore the ratio laid down while considering the scope of sub-rule (2) of Rule 129 of the Civil Rules of Practice in **D.RAM MOHAN RAO v. SRIDEVI HOTELS PRIVATE LIMITED, MANAGING DIRECTOR SRI MOHAN REDDY²** and also **SIDDA LINGAMMA v. SIDDA LINGAMMA AND ANOTHER³**.

Since this Court is in agreement with the reasons recorded by the trial Court, the contentions raised by Mr.Rafee are rejected and the revision is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stands closed.

S.V.BHATT, J

30th August, 2018
Lrkm

² 2005(6) ALT 712

³ 2005(1) ALT 757