

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.1430 OF 2017

ORDER:

The plaintiffs are the revision petitioners. They filed I.A. No.67 of 2017 in O.S. No.69 of 2009 on the file of Senior Civil Judge, Puttur, under Order XVI Rule - 14 and under Section 151 of the Code of Civil Procedure, 1908, requesting to summon the Tahsildar S.R. Puram, along with the documents which are original D.K.T. file in S.No.37/2, 37/3 and 37/4, and proceedings issued by the Tahsildar, S.R. Puram. The said application was dismissed by the learned Senior Civil Judge, holding that the petitioners have not followed the procedure laid down in Rule 129 of Civil Rules of Practice.

2. The revision petitioners filed the suit for division of plaint schedule properties into three (3) equal shares and to allot two such shares to them and one such share to the respondent - defendant and to divide the same by metes and bounds and to put them in possession by passing a preliminary decree. In their application, they stated that DKT patta was originally issued concerning item Nos.3 and 5 in the name of petitioner No.2's father viz., P. Guruswamy Naidu and Rajagopal Naidu and the original DKT file is in the custody of Tahsildar, S.R. Puram, and they are necessary to prove their case.

3. The said request was resisted to by the respondent by filing a counter contending that there is no pleading that the suit schedule property is a '*Darakasthu* Land' and thus, without there being a plea

and an issue thereto, the documents cannot be sought to be summoned from the Tahsildar's office and the petitioners are resorting to filing vexatious applications for production of documents which are not pleaded in the plaint.

4. The trial Court referred to the pleadings in the plaint and observes that there is a pleading in respect of DKT patta. The learned trial Judge referring to the contentions of the revision petitioners that the original DKT pata is in the custody of the defendant, holds that no steps were taken to cause production of documents from the custody of the defendant by following the proper procedure and assigning reasons that the procedure contemplated by Rule 129 of Civil Rules of Practice is not followed and, thereby, dismissed the application.

5. Heard Sri P. Gangarami Reddy, learned counsel for the revision petitioners, and Sri T.C.Krishnan, learned counsel for the respondent, and perused the order under revision including the material on record.

6. The learned counsel for the revision petitioners while tendering elaborate arguments would submit that what is sought by the petitioners is not just DKT patta, but the entire file and certified copy of the entire file will not be granted, and, therefore, the revision petitioners came up with such a request.

7. The learned counsel for the respondent, *inter alia*, contends that the order under challenge is rendered on proper liens and does not warrant interference.

8. A perusal of the affidavit filed in I.A. No.67 of 2017 by the revision petitioners would show that the DKT patta concerning item Nos.2, 3 and 5 were issued in the names of plaintiff No.2's father viz., P. Guruswamy Naidu and Rajagopal Naidu and the original DKT file is in the custody of Tahsildar, R.S. Puram, and the said documents are necessary to prove that item Nos.2, 3 and 5 are in joint possession of plaintiffs and the defendant. In the plaint, in paragraph No.5, the revision petitioner pleaded that plaintiff No.2 and the defendant purchased a part of item No.1 of the plaint schedule property from one Sankar Naidu and others under a registered sale deed dated 07.01.1985. Concerning item Nos.3 and 5, the revision petitioners would allege that during the life time of P. Guruswamy Naidu, he obtained DKT patta for item Nos.2 and 3 of the plaint schedule property. After the death of P. Guruswamy Naidu, the defendant started managing the joint family properties and obtained DKT patta in his name. Thus, they claim that the plaint schedule properties are joint family properties of the plaintiffs and the defendants.

9. The learned counsel for the revision petitioners also drawn attention to the averments in paragraph No.11 of the written statement filed by the respondent (defendant), reading thus:

“The defendant submits that he occupied the land in Sy.no.37/3 and 37/4 of Arumakulpalli village and spent considerable amount and labour for reclamation and has been in occupation, possession and enjoyment of the said property and raising crops in it. Later, he applied for patta for the said land to the then revenue officials and it is government poramboke, the then Tahsildar, Puttur taluk after due enquiry by following the procedure granted D-Form patta for an extent of Ac.3.07 cents in Sy.No.37/3 of Arumakulpalli village in the year 1982. Again this defendant applied patta for the remaining land to the then revenue officials and after due enquiry and found that this defendant has been in occupation, possession and enjoyment and the then Mandal Revenue Officer of S.R.Puram, granted D-form patta in favour of this defendant for an extent of Ac.1.62 cents in Sy.No.37/4 of Arumakulpalli village in the year 1989. The revenue officials recognized the possession and enjoyment of this defendant issued pattadar pass book and title deed in his favour and mutated his name in the relevant revenue records. This defendant took loan at first time from Primary Agricultural Co-op. Society, Marripalli and after discharge of the said loan again he obtained loan from Saphagiri Grameena Bank, Kothapalli Mitta on depositing the title deed given by the revenue officials in his favour.”

10. The main submission of the learned counsel for the revision petitioners is that the procedure contemplated by the provisions of Rule 129 of C.R.P.C. is only a guideline and cannot be construed as mandatory and according to the learned counsel, in the present

revision case, the entire file is sought for by the revision petitioners besides summoning the Tahsildar concerned to depose in relation to the file itself, under Order - XVI Rule - 6 of CPC, and, therefore, obtaining certified copy of the entire file does not arise so as to comply the requirements of Rule - 129 of CRPC. He placed reliance on a ruling in **Sidda Lingamma v. Sidda Lingamma and another**¹, wherein, a learned Single Judge of this Court in the context of a similar situation where 1-B register maintained by the Mandal Revenue Officer sought to be summoned, held in paragraph No.14 thus:

“14. Placing these Sub-Rules in juxtaposition, now let us examine the case on hand. What all the reasons learned Junior Civil Judge has enumerated in dismissing the petition are that it is not the case of the petitioner that she applied for a certified copy of IB Register to the Mandal Revenue Officer and without approaching the authority concerned for obtaining IB Register, straightaway filed the present petition before the court. It is further observed that the suit is of the year 1996 and it was coming up for further evidence of the plaintiff and at that stage, the petition was filed that too after taking several adjournments. These reasons are not germane for consideration of the petition. It is the case of the petitioner that the IB Register was tampered with and if the petitioner makes an application for issuance of certified copy of the said record, in compliance of Rule 129, the authority may issue the certified copy as it is on record. Thus, it is not possible to verify the original record whether it is tampered or not. In such circumstances, approaching the authority for issuance of certified copy of the original does not serve any purpose. Therefore, in

¹ 2005 (1) ALT 757

view of these facts and circumstances, the court below ought to have accepted the contention of the petitioner and issued summons for production of original IB Register, to the Mandal Revenue Officer, after recording reasons and directing the petitioner to deposit estimated costs for taking copies of such original. The court below ought to have been careful in extracting the provision in the order impugned herein. It appears he has added certain portion and deleting the other to the Rule from the Statute Book, and therefore, it did not give any meaning to the learned Judge, which culminated into an improper and unjust finding. Therefore, the Officers, adjudicating the rights of the parties, are required to be careful and vigilant in dealing with the lis. The court below, extracting improper provision of law, has went wrong in comprehending the Rule position and thus failed to consider the request made by the petitioner. For these two defects, the order impugned is liable to be set aside and is accordingly set aside. The Civil Revision Petition is accordingly allowed. No order as to costs.”

11. The only distinction between the fact-situation occurring in the above case and in the present case is, in the aforesaid ruling, the very 1-B Register entries were tampered, whereas, in the present case, the defendant taking advantage of management of the plaint schedule properties, more particularly, item Nos.2, 3 and 5, managing the revenue authorities got DKT patta, though, originally DKT patta was granted in favour of the father of petitioner No.2 P. Guruswamy Naidu, and paternal uncle Rajagopala Naidu, and only to bring the same into light, summoning of the register is sought for.

12. Answering the arguments advanced by the learned counsel for the revision petitioners, the learned counsel for the respondent insisting strict adherence to Rule 129 of Civil Rules of Practice, relied on a ruling in **D. Ram Mohan Rao v. Sridevi Hotels Pvt. Ltd., rep. by its Managing Director**², where a learned single Judge of this Court held that the twin requirements of Rule 129 of CRPC are to be observed before ordering to summon to cause production of relevant documents.

13. The learned counsel for the respondent would also rely on yet another ruling in **Maddula Brahmaiah v. Sri Rama Financial Services**³, where a learned single Judge of this Court emphasised on the requirements of Rule 129 of CRPC before making an application under Order - XVI Rule 6 of CPC.

14. In **D. Ram Mohan Rao**², it is observed that certified copy of the documents could have been obtained but it does not deal with summoning entire file. But, typical fact-situation is occurring in the instant case. Even in **Maddula Brahmaiah**³, auction register and other documents were sought to be produced from the custody of the chit registrar.

15. As mentioned in the above, in fact, unless the register is produced which entries are required to be examined by the Court, is reaching to a just finding on whether where DKT pattas were

² 2006 (1) ALD 28

originally issued in favour of P. Guruswamy Naidu and Rajagopal Naidu concerning item Nos.2, 3 and 5. This apart, on what basis, the respondent could obtain DKT patta in case, original DKT patta was issued in the name of the aforesaid two persons can also be unearthed. In this background, observance of twin requirements of Rule 129 of CRPC would not come in the way.

16. Yet another submission made by the learned counsel for the respondents is that the plaintiffs have not chosen to show the Tahsildar, R.S. Puram, as one of the witnesses to be examined, but that ground is not open to the respondents to resist the request in the present I.A. Hence, the order under challenge is liable to be set aside.

17. Therefore, the Civil Revision Petition is allowed setting aside the order under revision. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision petition stand closed.

A. SHANKAR NARAYANA, J

March 23, 2018.

PV

³ 2009 (1) ALD 103