

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5036 of 2017

ORDER:

The petitioner – plaintiff filed O.S. No. 73 of 2012 on the file of the Senior Civil Judge's Court at Dharmavaram for partition and separate possession of his joint 1/6th share in the plaint schedule property and the said suit is at the stage of arguments. It is at that stage, the petitioner came up with I.A. No. 241 of 2017 to reopen the matter for adducing evidence on his side for examining the Mandal Surveyor of Dharmavaram and I.A. No. 242 of 2017 under Order XVI Rule 1(3) read with Section 151 of the Code of Civil Procedure to issue witness summons to the Mandal Surveyor to produce original Field Map Book for Survey Nos. 25, 26 and 78 of Pothulanagepalli Revenue Village of Dharmavaram Mandal and to give evidence.

The case of the petitioner is that the contesting defendants pleaded that there was partition of properties and that sub-divisions were claimed under Ex.B5. D.W.1, in his cross-examination, though stated that no notice was served on him at the time of alleged survey, denied that Ex.B5 sub-divisions were not referred to in FMB extracts. In fact, D.W.1 admitted that there were only three sub-division letters in Survey No. 25 i.e. item No.1 of suit schedule property. As per Ex.A8 FMB extract, he further stated that he has no knowledge about FMB survey No. 25 confronted to him showing only four sub letters which is totally contrary to the entries in Ex.B5 and further stated that he has no knowledge of survey. Hence, it is essential to examine the Mandal Surveyor to bring-forth the truth for just conclusion.

The learned Senior Civil Judge, considering the material placed before her, dismissed both the Applications. This Revision is directed against the order dated 30.08.2017 in I.A.No. 242 of 2017.

Learned counsel for the petitioner submits that examination of the Mandal Surveyor is necessary to ascertain the validity of Ex.B5 for, D.W.1, though marked the document with regard to sub-division of property, failed to assert the same and that he also admitted that he has no knowledge of survey of the suit land. According to the learned counsel, the learned Senior Civil Judge ought to have allowed the Application, as it has been taken out for a limited purpose.

On the other hand, learned counsel for the respondents submits that if at all the petitioner wants to bring out the discrepancies in the documents filed by the respondents - defendants, he ought to have raised the objection at the time of cross-examination of D.W.1. He further submits that this Application has been filed at the fag end, only to protract the matter.

Considered the respective submissions. It is to be seen that in the written statement filed in the suit, as far back as on 31.07.2012, a categorical stand was taken by the contesting defendants denying right of the plaintiff over the suit schedule properties. It was also averred that the suit schedule property along with other properties were sub-divided as per oral partition on 13.07.2014. A perusal of the written statement discloses various developments, which have taken place, commencing from 1938. It is suffice to mention that the defendants, in categorical terms, have denied the right of the petitioner over the suit schedule property. It is the further assertion that the suit was filed to

harass the defendants and to extract money from them. In the light of the above stand taken by the respondents – defendants, it is for the plaintiff to establish his right, title and possession over the suit schedule property. It is only thereafter, the rights of the respective parties and their entitlement could be determined. Even assuming that a sub-division had taken place with respect to the suit schedule property, at an earlier point of time, in the ultimate analysis, if the petitioner is able to establish that he is entitled to the relief claimed in the suit, the details could be worked out thereafter.

Under Order XVI Rule 1 (3) CPC, the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. Order XVI appears to be an exception to the general rule that a party is required to establish his case through the witnesses whose list is required to be provided in terms of sub-rule (1) thereof, within 15 days of settlement of issues. Though there is no bar for a party to bring a person, whose name is not in the list of witnesses provided, it is required by such a party to specify why such name was not mentioned at the time when the list of witnesses was furnished.

In the present case and also in the Courts below, hitherto, there appears to be no practice of furnishing the list of witnesses and the evidence is being led as per convenience. Even assuming that such practice is in place, to plead an excuse by the plaintiff - petitioner to have not cited the Mandal Surveyor as a witness, except that the petitioner is an illiterate person, there is no

explanation for the delay in moving the Application till the fag end. As rightly observed by the learned Senior Civil Judge, notwithstanding the illiteracy of the plaintiff, the fact of the matter is that he is represented by a counsel, who is experienced enough to guide him. Apart from the delay, as stated supra, at this stage, whether the suit schedule land was subsequently, sub-divided or not may not be of much relevance, as, it is only on the plaintiff's succeeding in the main suit the question of determining the rights of the individual parties would arise.

Hence, in the facts of the present case, there being no reasons warranting interference of this Court, in exercise of its revisional jurisdiction, with the order under Revision, the Civil Revision Petition is dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

April 2018

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