

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4184 OF 2018

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the unsuccessful plaintiffs assailing the docket order, dated 05.07.2018, of the learned Senior Civil Judge, Chirala, passed in I.A.No.570 of 2018 in O.S.No.104 of 2007.

2. I have heard the submissions of the learned counsel for revision petitioners at the stage of admission. No notice is ordered to the respondents - defendants, as this Court, having regard to the nature and scope of the matter, is inclined to dispose of the revision petition at the stage of admission.

3. From the pleadings, the grounds urged, the submissions made and the material documents, the following facts are noticeable:

“The plaintiffs brought the suit for declaration of title. The 3rd defendant along with other defendants is contesting the suit. During the course of trial, exhibits B4 to B11 were marked on the side of defendants. Afterwards, the defendants filed the afore-stated Interlocutory Application requesting for permission to summon the Tahasildar, Vetapalem, to cause production of the petition listed documents and give evidence on behalf of contesting defendants 2 to 15 and 17 *inter alia* stating that exhibits B6 to B11 were already marked, however, subject to proof and relevancy; that during the course of cross-examination of the witness, through whom the above said documents were marked, the plaintiffs challenged the genuineness of the said documents; that it has, therefore, become necessary to summon the

Tahasildar, Vetapalem, to cause production of the originals of exhibits B6 to B11 and give evidence to substantiate the defence of the defendants that the subject property is a Government property and that the plaintiffs are not entitled to seek declaration of title in respect of the subject property.

However, the plaintiffs, having filed a counter, resisted the said application. The case of the plaintiffs is that the defendants are intending to drag on the proceedings; that the documents are not genuine and are also not relevant; that they do not advance the pleaded case of the defendants any further; that in the written statement filed, the defendants have not pleaded that the subject property is a Government property; that by way of evidence which they intend to adduce, without there being a foundation in the pleadings, they are changing the line of defence; that the same is impermissible under facts and in law; and that in any view of the matter, the examination of the Tahasildar and production of originals of exhibits B6 to B11 is not necessary for adjudication of the issues settled in the suit.”

4. By the impugned order, the trial Court allowed the petition observing that the suit being one for declaration of title, it is necessary to give an opportunity to the defendants to summon the Tahasildar to produce the documents and give evidence and that the evidence the Tahasildar may give may be crucial. Aggrieved thereof, the present revision is filed by the plaintiffs.

5. Learned counsel for the petitioners - plaintiffs, while reiterating the case of the plaintiffs, which is already stated supra, *inter alia* contended that exhibits B6 to B11 are certified copies issued by a public servant

during discharge of his duties; that they are already marked, though they are not relevant; that the contesting defendants have not taken any defence in their written statement that the subject property is a Government property; that since the proposed evidence has no foundation in the pleadings and as the said evidence is not relevant, the trial Court ought to have dismissed the petition of the defendants instead of allowing it; and that the title of the plaintiffs to the subject property has to be decided basing on the documentary evidence produced by both parties.

6. I have given earnest consideration to the facts and submissions.

7. The documents, which are already marked as exhibits B6 to B11, are copies of public records like FLR, 1B Namuna, Adangal Pahani, report of the Tahasildar etcetera and they relate to the property bearing Survey No.539/1. Be that as it may.

8. The suit schedule property is in an extent of Ac.5-00 in Survey No.539/1 of Kothapet Panchayat. It is not in dispute that during cross-examination of the witness, through whom the said documents exhibits B4 to B11 were marked, a challenge is made to the genuineness of the documents marked. Therefore, with an intention to prove the genuineness of exhibits B6 to B11, the contesting defendants filed the subject petition requesting to summon the Tahasildar, Vetapalem, for causing production of the original documents as well as giving evidence. Learned counsel for the petitioners rightly pointed out that in the written statement filed, the defendants have not taken a specific plea that the property is a Government property and that on the other hand, the plaintiffs have set up title in themselves in respect of the suit schedule

property. According to his submissions, the defendants are now taking a new plea that the property is a Government property and for that purpose, they are intending to examine the Tahasildar and, therefore, the evidence being sought to be introduced without there being any pleading in the written statement is not relevant and is inadmissible. Be that as it may.

9. The documents are already marked. If the Tahasildar is summoned and is permitted to produce the originals of exhibits B6 to B11 and give evidence, the entire evidence will be on record. Once the documents are permitted to be marked and their genuineness is disputed in cross examination of the witness through whom they are marked, it is not fair to deny the defendants an opportunity to prove the documents by summoning the public officer and public record concerned. In the considered view of this Court, this is not the stage to either evaluate or appreciate the evidence and consider its relevancy. It is for the trial Court to consider the relevancy, probative value as well as the weight that is to be attached to the said evidence at the appropriate stage and it is also for the trial Court to consider as to whether the evidence, which the Tahasildar is going to give and the documents, which he is going to mark, shall be considered or not in the absence of any foundation in the pleadings, however, having regard to the contentions which both the parties may advance.

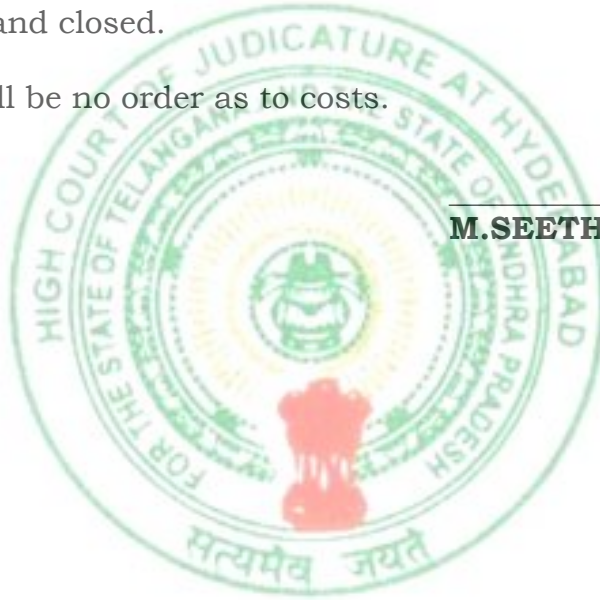
10. Viewed thus, this Court finds that this revision petition can be disposed of with the above observations and appropriate directions, in the interests of justice.

11. Accordingly, with the above observations, the Civil Revision Petition is disposed of confirming the order of the trial Court. However, the trial Court, while evaluating and appreciating the oral and documentary evidence that may be adduced through the Tahasildar, who is summoned to give oral and documentary evidence, shall have due regard to the contentions of the plaintiffs that there is no foundation in the pleadings of the defendant and that the said evidence is not relevant for adjudication of the issues settled in the suit.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

There shall be no order as to costs.

July 30, 2018
MD



M.SEETHARAMA MURTI, J