

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6247 OF 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the order dated 05.12.2016 in I.A.No.1706 of 2016 in O.S.No.98 of 2012 passed by the IV Additional District and Sessions Judge, Kakinada, East Godavari District, dismissing the petition filed under Order XVI Rules 1 and 2 and Section 151 C.P.C. to summon the then Revenue Officer, Kakinada Municipal Corporation by name D.Rambabu, who is now working at Visakhapatnam, Zone II to V, to prove the endorsement and certificates issued by the said D.Rambabu as a Public Information Officer-cum-Revenue Officer, Kakinada Municipal Corporation.

The interlocutory application was filed on the ground that the suit is filed for permanent injunction and it is for the petitioner to prove his possession and enjoyment as on the date of filing the suit. But the Court below dismissed the petition on the ground that the petitioner did not assign any reason to summon the Revenue Officer D.Rambabu, who is the then Revenue Officer-cum-Public Information Officer at Kakinada Municipal Corporation and that the suit is of 2012.

It is the case of the petitioner that the schedule property is agricultural land and whereas the respondent contending that there is a house with two door numbers. To disprove the contention of the respondent, the petitioner obtained information under Right to Information Act and certificate issued by the then Public Information Officer, Kakinada Municipal Corporation and

filed before the Court below.

According to Order XVI Rule 1(2) C.P.C. a party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned. As per Order XVI Rule 1(3) C.P.C. 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. (4) subject to the provisions of Sub-rule (2) summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court, in this behalf within five days of presenting the list of witnesses under Sub-rule (1). Thus, the present case would fall under Clause (2) of Order XVI Rule 1 C.P.C. since the Revenue Officer-cum-Right to Information Officer is not listed witness. Therefore, Sub-rule (2) of Rule 1 of Order XVI C.P.C. is applicable, he is an official witness, unless, his personal appearance before the Court to speak about the factum of existence of houses with two door numbers is necessary, the present Revenue Officer is competent to speak about the said fact. As such the said D.Rambabu need not be summoned. However, the present Revenue Officer of Kakinada Municipality may be summoned for the purpose of proof of those documents. The delay pointed by the counsel is subject to compliance of requirements i.e. deposit of process fee, TA and DA to the witness.

In the result, the civil revision petition is allowed setting

aside the order dated 05.12.2016 in I.A.No.1706 of 2016 in O.S.No.98 of 2012 passed by the IV Additional District and Sessions Judge, Kakinada, East Godavari District and I.A.No.1706 of 2016 in O.S.No.98 of 2012 is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

14.11.2018

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