

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.4379 of 2018 & 4390 of 2018

COMMON ORDER:

These two civil revision petitions, under Article 227 of the Constitution of India, filed by the unsuccessful petitioners/plaintiffs, are directed against the common order, dated 18.04.2018, of the learned Senior Civil Judge, Markapur, passed in I.A.Nos.300 & 301 of 2018 in O.S.No.175 of 2012.

2. I have heard the submissions of Sri *Chetluru Sreenivas*, learned counsel appearing for the revision petitioners/plaintiffs ('plaintiffs' for brevity). Though respondents/defendants are served with notices, they have not entered appearance. I have perused the material record.

3. The facts, which are necessary for consideration and which are noticeable from the pleadings and submissions, in brief, are as follows: The plaintiffs filed the suit against the defendants for declaration of title and recovery of possession of Ac.6.32 cents of land in Survey No.16/1 of Boyalapalli Shtrotruim Village, more fully described in the schedule annexed to the plaint *inter alia* stating that the property was purchased by the father of the plaintiffs under registered Sale Deeds, dated 18.07.1955 and 05.01.1959, and that the father of the plaintiffs leased out the land to the defendants on sharing system and on the term that the defendants shall take 2/3^{rds} of the total produce and pay a 1/3rd of it to the father of the plaintiffs and that after the death of the father of the plaintiffs, the defendants stopped paying the share of produce to the plaintiffs and that the

defendants further failed to deliver possession of the land and, hence, the suit is filed. The defendants filed a written statement taking various defences and raising contentions including a specific contention that the plaint schedule land is in exclusive possession and enjoyment with absolute rights from 30.08.1975 onwards under an Agreement of Sale executed by the father of the plaintiffs and that subsequently in the month of October, 1978, their possession and enjoyment were recognised by the Inams Deputy Tahasildar, Markapur, and that Ryotwari pattas were issued in their favour in the year 1981 recognizing their possession and enjoyment and, thus, their possession was confirmed by the Tahasildar. However, during the course of the trial, the plaintiffs filed the subject applications for reopening of the evidence and for permission to summon the RDO, Markapur, for production of the file in Dis.No.G/803/2009, said to be containing the alleged disputed agreement, which was said to have been executed by their father of the plaintiffs and which was said to have been produced by the defendants before the RDO while obtaining the pattadar passbooks. However, on the resistance of the said applications by the defendants stating that the said evidence is not necessary and that no grounds are made out for reopening the evidence and issuing summons to the RDO, the trial Court dismissed the said two petitions of the plaintiffs by the impugned common order. Therefore, the plaintiffs are before this Court.'

4. Learned counsel for the revision petitioners/plaintiffs submits as follows: 'The defendants, having contended that they have purchased the property from the father of the plaintiffs under an Agreement of Sale, failed to produce the document. They are merely contending that on the basis of their possession and enjoyment

based on the said alleged agreement of sale, passbooks have been issued by the RDO *vide* proceedings in File Dis.No.G/803/2009. Therefore, the contentions of the defendants are based on the agreement of sale. And, their further contention is that their names have been entered in the Revenue records in respect of the property based on the proceedings of the RDO, which in turn was said to have been issued based on said disputed agreement of sale. Yet they have not produced the copy of the agreement of sale inspite the plaintiffs specifically denying the same. Therefore, it has become necessary for the plaintiffs to summon the file concerned from the office of the RDO to show that no such Agreement of Sale was ever executed by the late father of the plaintiffs and that the agreement of sale, if any, filed in the said proceedings before the RDO is a forged agreement. As could be seen from the record, the only defence of the defendants is in the nature of denial and that the documents and the evidence of the RDO are not necessary. In this backdrop the Court below ought to have granted the request of the plaintiffs for summoning the relevant file/record from the office of the RDO, more particularly as the suit is filed for declaration of title and as valuable rights in respect of valuable property are involved in the *lis*.

5. Having given earnest consideration, this Court is of the considered view that in the facts and circumstances stated by the plaintiffs and as the suit is one for declaration of title and recovery of possession involving valuable rights of the plaintiffs with regard to valuable immovable property, it is just and fair to give them an opportunity to let in evidence, which they intend to adduce in support of their case pleaded in the plaint. It is needless to say that such a course sub-serves the ends of justice and also helps the

plaintiffs in placing one more assured piece of evidence before the trial Court, which may be helpful to the trial Court in appreciating and evaluating the entire evidence that may be brought on record during the course of trial and in effectively adjudicating the issues that are settled for trial in the suit. The defendants are merely denying the case of the plaintiffs and are saying that there is no need to summon the record, which is a public record. It is settled law that if the public documents/records, which are being sought to be summoned are found to be relevant and necessary to decide the real issue involved in the *lis* and when the Court feels that interests of justice require that such documents/records be received on file, then the court by exercising the judicious discretion would permit to summon the documents/records and receive the same on file & as evidence as per procedure and would appropriately consider their effect or probative value thereafter at a later stage. When such is the settled position and when the documents are being sought to be summoned for production in the trial court, before the arguments are completed, normally they would be permitted to be summoned and produced before the Court and an opportunity would be given to prove them and also to adduce rebuttal evidence, if any; and the effect and probative value of such evidence would be examined while deciding/adjudicating the issues raised and involved in the *lis*. Under these circumstances, this Court is of the considered view that the trial Court was not justified in refusing to accord permission to summon the documents/records.

6. For the aforesaid reasons, this Court is of the opinion that the common order impugned is unsustainable and is liable to be set aside.

7. In the result, the Civil Revision Petitions are allowed. And as a sequel, the impugned common order is set aside and I.A. Nos. 300 & 301 of 2018 in O.S.No.175 of 2012 are allowed; and, accordingly, the evidence on the side of the plaintiffs is reopened and the trial Court is directed to issue summons to the RDO for the purpose desired by the plaintiffs.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 11th September, 2018

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