

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.5706 of 2018

ORDER:

This Civil Revision Petition is filed questioning the order dated 14.08.2018 in IA No.471 of 2018 in OS No.213 of 2013 passed by the Principal Junior Civil Judge, Nizamabad.

The application was filed under Order XVI Rules 1, 5 and 6 CPC to issue summons to the Town Planning and Building Inspector, Municipal Corporation, Nizamabad and also to the earlier Town Planning and Building Inspector, Municipal Corporation, Nizamabad by name Smt. Habeeba.

The case of the petitioners/defendants before the lower Court is that the respondent/plaintiff has encroached into public property and has constructed his building contrary to the sanctioned plan. The defendant, who is contesting the suit, filed a counter claim and sought a declaration that the construction of the suit schedule property is against the sanctioned plan and building rules and for demolition of the entire structure raised by the plaintiff.

During the course of the trial, an Advocate Commissioner was appointed. His report was also filed into the Court. After the report was filed into the Court,

IA No.471 of 2018 was filed under Order XVI Rules 1, 5 and 6 CPC to summon a number of records etc. The same was rejected. Questioning the said order, the present revision is filed.

This Court has heard Sri Nandigam Krishna Rao, learned counsel for the revision petitioners/defendants and Sri Shafath Ahmed Khan, learned counsel for the respondent/plaintiff.

The learned counsel for the revision petitioners argued that in order to prove their counter claim, it is just and necessary that the documents that are sought to be summoned should be produced. It is his contention that the plaintiff is a rich and powerful person who frequently misused his power and constructed the house contrary to the approved plan and building rules, therefore, he states that the documents are needed to be summoned.

In reply to this, the learned counsel for the respondent/plaintiff submits that the Advocate Commissioner already inspected the suit schedule property and filed a detailed report. The report is on the file of the Court and a rough sketch drawn by Smt. Habeeba is also available before the Court, as per the counsel. The learned counsel points out that the enclosures to the Commissioner's Report show that there

are at least 10 documents which are annexed to the same. The learned counsel for the respondent also submits that the Advocate Commissioner was already examined as a witness and his report was already marked as an exhibit in the lower Court.

In these circumstances, after perusing the report and noting the fact that the Advocate Commissioner's Report is already a part of the court record and that the same has already been exhibited, this Court is of the opinion that issuing summons once again to the said Smt. Habeeba to produce documents is not really correct. The original sketch submitted by the earlier Town Planning and Building Inspector, Municipal Corporation, Nizamabad was also enclosed to the Commissioner's Report. Therefore, it is clear that the witnesses that are to be summoned are not really necessary in the facts and circumstances of the case. Order XVI Rule 1 (2) CPC also clearly says that the purpose for which a witness to be summoned is to be clearly mentioned. A perusal of the affidavit does not show why the said documents are necessary to be summoned, despite the Commissioner's Report is available. If the Commissioner's Report and its enclosures were not available or were incomplete etc., the revision petitioner could have sought for summoning the said documents. The affidavit is silent about any

deficiencies in the said report. No “purpose” is actually mentioned in the affidavit to summon the records at this stage.

Therefore, this Court is of the opinion that the summoning record at this stage does not really arise. Even the lower Court rightly observed that Exs.C.8 and C.10 were already on the record. In that view of the matter, this Court is of the opinion that there are no infirmities in the impugned order.

Accordingly, the Civil Revision Petition is dismissed. The order dated 14.08.2018 in IA No.471 of 2018 in OS No.213 of 2013 passed by the Principal Junior Civil Judge, Nizamabad is confirmed. However, this order will not preclude the parties from making an application at the appropriate stage if the need arises and on filing of such application, the matter will be decided by the lower Court as per law, without being influenced by what is stated in this order.

In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 28.11.2018
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