

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 6824 OF 2018

ORDER:

Questioning order dated 25-10-2018 in I.A.No. 606 of 2018 in O.S.No. 5 of 2012 on the file of the Court of Senior Civil Judge at Narayanpet (for short, 'the Court below'), the present revision under Article 227 of the Constitution of India is filed by the petitioners-defendants.

2. The respondent-plaintiff filed suit O.S.No. 5 of 2012 on the file of the Court below against the petitioners for declaration of title and recovery of possession. In the said suit, the petitioners filed the abovementioned I.A. under Order XIII Rule 10 (1) read with Section 151 of CPC to call for original simple sale deed dated 24-09-1991, which is already filed in A.S.No. 13 of 2017 pending on the file of the Court below, to prove their case. The case of the petitioners is that they are owners and possessors of suit houses bearing house Nos. 2-32, 2-33 and 2-39 and to prove the same, they filed sale deed dated 24-09-1991 in O.S.No. 64 of 2008 on the file of the Court of Junior Civil Judge at Narayanpet which is marked as Exs.A15 and now the same is available in A.S.No. 13 of 2017 pending on the file of the Court below and therefore requested to call for the same. By the impugned order, the Court below dismissed the above interlocutory application on the ground that the said document is inadmissible in a suit for declaration of title and recovery of possession.

3. Feeling aggrieved, the present revision is filed on the ground that the reason assigned by the Court below is unwarranted and the jurisdiction of Court under Order XIII Rule 10 of CPC is limited and thereby dismissal of the application is a serious illegality and requested to set aside the order of the Court below.

4. During hearing, learned counsel for the petitioners while reiterating the ground urged in the petition has drawn attention of this Court to the judgment of this Court in ***K.Ramamoorthi Vs. C.Surendranatha Reddy***¹ in support of his contention.

5. Under Order XIII Rule 10 (1) of CPC, Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same. However, the procedure is prescribed under Rule 128 of Civil Rules of Practice (for short, 'the Rules') which deals with production of records in the custody of a Court. To claim relief to send for record under Order XIII Rule 10 of CPC, the petitioners are required to comply with the requirements under Rule 128 of the Rules. In the case on hand, the petitioners did not comply with the requirements under Rule 128 of the Rules. Therefore, on this ground alone, the petitioners are disentitled to claim relief. The Court below dismissed the petition on the ground that the document is inadmissible in evidence. Before calling for records, the Court below is not expected to express its opinion even without looking into the contents of the document and arrive at such a conclusion that the document is inadmissible for want of registration. The opinion expressed by the Court below even to send for documents exercising power under Order XIII Rule 10 of CPC is an illegality and the same is liable to be set aside but due to non-compliance of Rule 128 of the Rules, the petition cannot be allowed.

6. For the aforementioned reasons, the civil revision petition is dismissed. However, liberty is given to the petitioners to renew their request strictly adhering to Order XIII Rule 10 of CPC and Rule 128 of the Rules.

¹ 2012 (6) ALD 163

7. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

Date: 20-11-2018.

JSK

M.SATYANARAYANA MURTHY, J.

