

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5980 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 22.09.2017 passed in I.A.No.664 of 2017 in O.S.No.258 of 2014 on the file of the III Additional Junior Civil Judge at Nellore.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the petitioners herein have filed O.S.No.258 of 2014 on the file of the III Additional Junior Civil Judge, Nellore, against the respondent for perpetual injunction in respect of the suit schedule property. After closure of the evidence on both sides, the petitioners filed I.A.No.664 of 2017 in O.S.No.258 of 2014 to reopen the suit to issue summons to the then Tahsildar of Nellore to cause production of RCB No.2084 of 2008 and depose evidence. The petitioners also requested to issue summons to the then Tahsildar, Nellore, to identify his signatures on Exs.A.1 to A.3. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition on merits. Hence, the revision petition.

4. Now the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. It is not in dispute that the petitioners herein have filed O.S.No.258 of 2014 on the file of the III Additional Junior Civil Judge, Nellore, against the respondent for perpetual injunction in respect of the suit schedule property. As per the pleadings, in the

plaint, the Government granted possession certificate in favour of the petitioners in the year 2006. The petitioners also deposed that Mandal Revenue Officer, Nellore, issued a possession certificate in their favour in the year 2006. During pendency of the suit, the petitioners herein have filed I.A.No.231 of 2017 under Order XVI Rule 7 C.P.C. to call for RCB No.2084/2006 and also issue summons to the then Tahsildar, Nellore. The trial Court allowed the said petition. The then Tahsildar, Nellore, was examined as PW.7. Again the petitioners filed the present interlocutory application, under Order XVI Rule 7 C.P.C. to call for RCB No.2084/2008 and also issue summons to the then Mandal Revenue Officer, Nellore.

6. To substantiate the arguments, the learned counsel for the petitioners has drawn the attention of this Court to the decision in **Penmatsa Padma Vs. Indukuri Seetamma and others**¹, wherein paragraph Nos.6 and 7 reads as follows:

6. It is needless to say that appreciation of evidence already on record regarding validity or otherwise of the Will, need not be gone into at this stage. However, the learned Judge had recorded certain reasons. It is also needless to say that Courts ordinarily do not deny opportunity to summon documents which may be relevant.

7. In the facts and circumstances of the case, the revision petitioner-applicant had thought it fit to summon the original Will. It is needless to say that the burden is on her to prove and establish the Will on the strength of which the suit is based. Merely because the certified copy had been marked may not be a ground to deny the said opportunity, since it may be that the original may have been looked into while deciding or appreciating the validity or otherwise of the Will in question. It is true that even provisions of the Order XVI Rules 6 and 7 of the Code appear to be slightly different and whether to permit the witnesses for producing the document to be examined or not may not be decided at the appropriate stage.”

¹ 2006(2) APLJ (HC) 399

7. As per the principle enunciated in the case cited supra, the Court can allow the petition filed under Order XVI Rule 7 C.P.C. basing on the facts and circumstances of the case.

8. In the instant case, the trial Court called for the records as requested by the petitioners. As per the pleadings, in the plaint, the possession certificate was issued to the petitioners/plaintiffs way back in the year 2006. Any amount of oral or documentary evidence without a pleading is of no avail. It is not the case of the petitioners that possession certificate was given to them in the year 2008. The parties to the proceedings have to take a reasonable care at the time of preparing the pleadings. Even if the documents are received, the same may not improve the case of the petitioners. The petitioners have not taken any care much less reasonable care in filing the petition. In a suit for perpetual injunction, the only point to be considered by the Court is whether the petitioners/plaintiffs were in possession of the property as on the date of filing of the suit or not. In the instant case, the trial Court has considered the material available on record in right perspective and dismissed the petition. It is an admitted fact that the matter is coming up for arguments. I am fully endorsing the findings recorded by the trial Court. It is needless to say that this Court shall not lightly interfere with the orders passed by the trial Court. The facts of the case cited supra are different to the facts of the case on hand. There is no illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

9. In the result, the Civil Revision Petition is dismissed. However, the trial Court is hereby directed to dispose of O.S.No.258 of 2014 without being influenced by the observations, if any, made by this Court in this order. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 26.06.2018

Ivd

