

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.7135 OF 2017**

**ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the orders dated 13.10.2017 in I.A.No.421 of 2017 in O.S.No.258 of 2009 on the file of the Court of the Principal Junior Civil Judge, Kadapa.

2. The facts leading to filing of the present revision are briefly as follows:

The petitioner (plaintiff) filed O.S.No.258 of 2009 on the file of the Court of the Principal Junior Civil Judge, Kadapa, against the respondents seeking perpetual injunction in respect of the suit schedule property. The petitioner filed I.A.No.561 of 2009 under Order XXXIX Rules 1 and 2 C.P.C. seeking interim injunction against the respondents and the same was allowed on 05.05.2009. During pendency of the suit, the respondents herein filed I.A.No.455 of 2014 in O.S.No.258 of 2009 under Order XVI Rule 6 read with Section 151 C.P.C. seeking to issue summons to the Sub-Registrar to cause production of the petition schedule document and also to depose evidence. The trial Court dismissed the said petition. Again the respondents filed I.A.No.54 of 2016 in O.S.No.258 of 2009 under Order XVI Rule 6 read with Section 151 C.P.C. seeking to issue summons to the Sub-Registrar to produce the petition schedule document and to depose evidence. The trial Court dismissed the same. The respondents filed the present petition i.e., I.A.No.421 of 2017 in O.S.No.258 of 2009 under Order XVI Rule 6 read with Section 151 C.P.C. to issue summons to the

Sub-Registrar to produce the petition schedule document and also to depose evidence. The petitioner filed counter opposing the same. The trial Court allowed the said petition. Hence, the revision.

3. Learned counsel for the petitioner submitted that the trial Court failed to consider that the earlier petitions filed by the respondents were dismissed. She further submitted that the trial Court has not assigned any reason much less cogent and valid reasons while allowing the petition. She also submitted that if the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice.

4. Learned counsel for the respondents submitted that mere dismissal of the previous petitions alone is not a ground to allow this revision petition. He further submitted that the trial Court has assigned reasons much less cogent and valid reasons while allowing the petition. He also submitted that there is no illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court.

5. Now the point that arises for consideration in this revision is:

Whether the order dated 13.10.2017 passed in I.A.No.421 of 2017 in O.S.No.258 of 2009 is sustainable either on facts or in law?

6. The following admitted facts can be culled out from the pleadings:

The petitioner herein filed O.S.No.258 of 2009 on the file of the Court of the Principal Junior Civil Judge, Kadapa, seeking

perpetual injunction against the respondents in respect of the suit schedule property. The suit schedule property is a rasta. During pendency of the suit, the respondents filed I.A.No.455 of 2014 and I.A.No.54 of 2016 under Order XVI Rule 6 read with Section 151 C.P.C. seeking to issue summons to the Sub-Registrar to cause production of the petition schedule document and to give evidence. The trial Court dismissed the said petitions. For one reason or other, the respondents did not choose to challenge the orders passed in I.A.No.455 of 2014 and I.A.No.54 of 2016 in O.S.No.258 of 2009. The orders passed by the trial Court in I.A.No.455 of 2014 and I.A.No.54 of 2016 became final. Thereafter, the respondents filed I.A.No.421 of 2017 in O.S.No.258 of 2009. The relief sought in I.A.No.455 of 2014, I.A.No.54 of 2016 and this petition is one and the same. The trial Court did not consider the legal consequences of dismissal of the earlier petitions. The trial Court has not assigned reasons much less cogent and valid reasons for allowing of the present petition. The trial Court without giving specific finding with regard to maintainability, made an observation that no prejudice will be caused to the petitioner even if the petition is allowed and allowed the petition. It is not in dispute that the Sub-Registrar has not registered the document presented by respondent Nos.1 and 2 on 05.05.2009. In such circumstances, the remedy available to the respondents is otherwise. As rightly pointed out by the learned counsel for the petitioner, the present petition is hit by the principles of *res judicata*. The trial Court having dismissed earlier petitions ought not to have allowed the present petition without assigning reasons much less special reasons. The trial Court has not considered all

these aspects and allowed the petition on assumptions and presumptions. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. Viewed from factual or legal aspects, the orders dated 13.10.2017 passed by the trial Court is not sustainable.

7. Having regard to the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

8. In the result, the Civil Revision Petition is allowed setting aside the orders dated 13.10.2017 passed in I.A.No.421 of 2017 in O.S.No.258 of 2009 on the file of the Court of the Principal Junior Civil Judge, kadapa. There shall be no order as to costs.

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

Date: 06.04.2018  
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**T.SUNIL CHOWDARY, J**