

THE HON'BLE MS. JUSTICE J. UMA DEVI

CRP NO. 7319 OF 2017

ORDER:

Heard the learned counsel for the revision petitioners.

Though Sri K. Gopal, learned counsel has filed vakalat for the respondent, he did not appear before this Court. From 16.2.2018 onwards this matter underwent several adjournments to hear the arguments of the respondent, but none appeared for her for any of the adjournments. Today also there was no representation on her behalf.

The revision petitioners are the defendants in O.S.No. 14 of 2008 on the file of the Senior Civil Judge, Nirmal. It appears that the revision petitioners have filed two interlocutory applications vide IA Nos. 160 and 161 of 2017 to summon Ahmed Khan @ Kouser Khan, V.R.O., Venkatapur village of Nirmal Mandal to give evidence, and for production of certain documents i.e., original statement made by the plaintiff before the Village Secretary on 8.6.2004, as well as Mutation Register as evidence in the suit filed against them. Both the above interlocutory applications are dismissed by the Senior Civil Judge, Nirmal vide common order dated 21.10.2017.

The revision petitioners' contention is that the documents which they intend to summon are crucial documents, and are relevant for establishing their case. The Court below ought to have passed an order summoning the documents by allowing his application. According to them, it is only under the exceptional cases where the Court feels that filing of the application to summon documents is

vexatious and that such application is made with *mala fide* intention, the Court may refuse to allow such application. The learned counsel appearing for the revision petitioners has made me to go through Order XVI, Rule 1 of the Code of Civil Procedure (CPC) which empowers the Court to summon the witnesses to give evidence or to produce documents. It reads as under,

“At any time after the suit is installed, the parties may obtain, on application to the Court or to such Officer as it appoints in this behalf, summons to persons whose attendance is required either to give evidence or to produce documents.”

The reasonings recorded by the Court below to dismiss the above application are,

- (1) that the petitioner who filed the petition to summon the M.R.O. to produce the document did not convince this Court as to why he did not obtain the certified copies of the said record and filed in this Court;
- (2) that it is rightly contended by the learned counsel for the respondent/plaintiff that in the absence of petitioners filing either the file number or the proceedings number in which the statement was alleged to be recorded by the revenue authorities, cannot be summoned and the same is waste of the time of not only the revenue officials, but also appears to have drag the suit proceedings;

In a case reported in *Gopala Krishna Murthy Vs. B. Ramachander Rao and others*<sup>1</sup> where similar request is made, the learned single Judge, after referring to several authoritative judgments on similar aspect, has laid the following propositions,

“(1) Under Order 16, Rule 1, Civil P. C. it is the right of the party at any stage of the suit to make an application to the Court seeking that summons be issued to a witness either to give evidence or to produce documents.  
(2) The Court is not entitled to refuse such an application on the ground that it might cause delay in the trial of the suit on the adjourned date of the suit.

(3) If the summons is not served by the adjourned date of the suit the party who filed the application to issue the summons would take the risk.

(4) If an application for an adjournment is made at the instance of the party who applied under Order 16, Rule 1, Civil P. C. it is for the Court to consider whether or not an adjournment should be granted.

(5) The Court may not refuse to order an application under Order 16, Rule 1, Civil P. C. on the ground that the evidence, if produced, may not be of any help to the applicant.

(6) Though Order 16, Rule 1, Civil P. C. does not in terms impose any restrictions on the Court, the Court in the exercise of its inherent jurisdiction may refuse to issue summons in an application made under O. 16, R. 1, Civil P. C. in those cases where it is satisfied that the application filed was not bona fide or was vexatious or granting the application would result in an abuse of

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<sup>1</sup> AIR 1973 AP 309

process of the Court. Except in these three above contingencies the application must almost always be ordered.”

One of the reasons recorded by the Court below to reject the request made by the revision petitioners to summon the Secretary and produce certain documents from the office of Mandal Revenue Officer, Sarangapur is, that no reasoning whatsoever is assigned by the revision petitioners for not obtaining the certified copies of the documents which they intend to bring on record. The other reasoning recorded by the Court below is, that the particulars such as file number or proceedings number in which the statement said to be recorded by the revenue authorities are not mentioned, therefore the same cannot be summoned. Merely because of failure of the revision petitioners to obtain certified copies of the documents which they intend to bring on record, their request to summon the documents from the office of Mandal Revenue Officer, Sarangapur and summon the V.R.O. may not have been rejected. The other reason assigned by the Court below to reject the request made to summon the document is also not correct according to me. If it is felt by the Court that furnishing of particulars and the details of the document are necessary to summon it, it can ask for such particulars and then summon. Applying the propositions laid down in the above case law, this Court hereby sets aside the impugned order passed by the Court below.

The Civil Revision Petition is accordingly allowed.  
Miscellaneous applications, if any pending, shall stand closed. No  
order as to costs.

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JUSTICE J. UMA DEVI

Dt.16.3.2018  
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