

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.6856 of 2017

And

Civil Revision Petition No.6859 of 2017

COMMON ORDER:

These two Civil Revision Petitions are directed against the orders dated 21.11.2017 in I.A. No.351 of 2017 and I.A. No.352 of 2017 in O.S. No.67 of 2011 respectively, on the file of Junior Civil Judge, Amudalavalasa, Srikakulam District. I.A. No.351 of 2017 was filed by the plaintiff under Section 151 of Civil Procedure Code (for short, 'C.P.C.') to reopen the case for the purpose of receiving the petition filed under Order 16 Rules 1 and 6 of C.P.C., whereas I.A. No.352 of 2017 was filed under Order 16 Rules 1 and 6 of C.P.C. to summon the Tahsildar, L.N. Peta Mandal, Srikakulam District. The learned Junior Civil Judge by his order dated 21.11.2017, while rejecting the request, dismissed both the Interlocutory Applications. Challenging the separate orders therein, the present two Civil Revisions are filed.

2. Today, when these Revision Petitions are called, there is no representation in the forenoon session. No proof of service is filed despite ordering notice to the respondents on 15.12.2017. Therefore, both the Revision Petitions were kept aside. Even at 2.30 p.m. and 3.10 p.m. there is no representation for the petitioner. Hence, taken up for disposal on merits, as in fact notices are unnecessary to be issued as there is no merit in both the Revision Petitions.

3. So far as the order passed in I.A. No.351 of 2017 is concerned, the learned Junior Civil Judge made a specific mention that the respondents mentioned in their counter that the suit in O.S. No.67 of 2011 being tried simultaneously with O.S. No.28 of 2011, where a similar petition filed by the petitioner was dismissed and referring to the same and also the rulings relied on by the learned counsel for the respondents before him in (2013) 14 SCC 1-C, finding that there is no reasonable ground to reopen the suit for the said purpose, dismissed the petition. In fact, the learned Junior Civil Judge observed that these petitions were filed at the stage of arguments and having considered the averments made in the affidavit he opined that there was no purpose in filing these petitions as the petitioner had already adduced evidence by marking documents which the petitioner sought to prove through the Tahsildar and other part of the petition to get the documents relating to Sy. No.48/2C/c & Sy. No.48/2A/a of Kothapeta Village, L.N. Peta Mandal, Srikakulam District and give evidence regarding the same whether the land in Sy.No.48/2B, measuring an extent of Ac.5-00 cents was allotted to him and issued D-form Pata, adangal, pattadar pass book, title deed and possession certificate in his favour for the land in Sy. No.48/2B and there is any land in Sy.Nos.48/2C/c & 48/2A/a of Kothapeta village allotted to any individual like respondents/defendants or Ramachandra Rao, does not relate to the suit schedule property and so recording having opined that there is no sufficient and satisfying reason to summon the

Tahsildar, L.N. Peta Mandal, Srikakulam District, dismissed the petition.

4. The other order passed is the consequential one to the order in I.A. No.351 of 2017.

5. In the grounds of Revision, the petitioners mentioned that as per the observations of this Court in C.R.P. No.3858 of 2016 filed against the order dated 24.6.2016, in I.A. No.21 of 2016 in O.S. No.28 of 2011 for the same relief and as such the impugned order is unsustainable and liable to be set aside is incorrect.

6. One of the last grounds is that the learned Junior Civil Judge without considering the main plea that the witness sought to be summoned is the crucial witness to prove his case with regard to the suit schedule property, which was allotted to him under Ex-servicemen quota, dismissed the petition, and, therefore, it is liable to be set aside.

7. When examined the record, it is to be found that the petitioner filed the suit for perpetual injunction simplicitor. It is not a suit where there is boundary dispute nor the suit is for declaration of title over a distinct area.

8. Therefore, in such an event, it is not absolutely indispensable to call the Tahsildar to give evidence. In fact, in a suit for perpetual injunction what all required by the petitioner as plaintiff to prove is, his possession over the suit schedule property by filing relevant documents, such as the adangals showing his possession or any other revenue records which would help in substantiating his

possession over the suit schedule property as on the date of filing the suit.

9. Therefore, question of summoning the Tahsildar to depose now mentioned in the affidavit, that too at the stage when the suit was coming up for arguments cannot be appreciated to treat that the Tahsildar is a crucial witness in such a situation.

10. Further ground is that similar application filed in different suit which was sought to be tried along with a suit in O.S. No.67 of 2011 has already referred to hereinbefore, certainly, comes in the way of allowing I.A. by the learned Junior Civil Judge.

11. Therefore, there is no merit in the present two Revision Petitions, and accordingly, both the Revisions are dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in both the Civil Revision Petitions shall stand closed.

A. SHANKAR NARAYANA, J

January 25, 2018.

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