

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP.No.195 of 2019

ORDER:

This Revision is filed assailing the order dt.25.10.2018 passed in I.A. No.402 of 2018 in O.S. No.40 of 2013 by the Senior Civil Judge at Manthani.

By the impugned order, the Court below allowed the application filed by the 1st respondent/3rd defendant to summon the 2nd respondent to appear before the Court along with the case record pertaining to Project No.449 for the purpose of marking in Ex.B series.

The suit itself is filed by the petitioner against the respondents for recovery of certain compensation amount awarded by the respondents 2 and 3 in respect of house premises and it is alleged in the plaint that the 1st respondent is trying to take away the said money.

The 1st respondent filed written statement opposing the suit claim and contending that the said property belongs to him.

It appears that the 1st respondent filed application under Order XVII Rule 1 and 2 CPC to receive certain copies of original documents i.e. estimate of Project No.449 pertaining to his house that was dismissed by the Court below on technical ground that the 1st respondent did not file reopen petition.

Thereafter, the 1st respondent filed I.A. No.402 of 2018 contending that the property had been acquired by the respondents 2 and 3 for the purpose of 'mine' and was referred to Project No.449 and the 2nd respondent be summoned to produce the record relating to the said project for marking those documents.

Counter affidavit was filed by the petitioner opposing the said application stating that the 1st respondent should have challenged the order passed by the trial Court refusing to mark the documents produced by him and he cannot be permitted to summon the 2nd respondent to mark the documents.

By order dt.25.10.2018, the Court below allowed the said application. It rejected the contention of the petitioner that the 2nd respondent had already been set *ex parte* in the suit and observed that the said factor does not preclude the Court to summon him to give evidence particularly when he is an official witness and his evidence would throw some light on the facts of the case.

Assailing the same, this Revision is filed.

Though the counsel for the petitioner sought to contend that the order passed by the Court below is not sustainable because the 2nd respondent had already been set *ex parte* in the Court below, I am of the opinion that the Court below has rightly allowed the I.A. No.402 of 2018 holding that the 2nd respondent is an official witness and is competent to testify. Merely because an earlier application filed by the petitioner to receive copies of the original documents pertaining to Project No.449 as far as his alleged house is concerned was dismissed, there is no bar to the petitioner to summon the 2nd respondent to produce the original record for the purpose of marking the same.

Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

Accordingly, this Revision fails and is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03.07.2019
LSK

