

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.799 and 869 of 2019

COMMON ORDER :

Since these two Revisions arise between the same parties out of the same suit, they are therefore being disposed of by this Common Order.

2. The petitioners in both these Revisions are plaintiffs in the above suit.

3. They filed the said suit for declaration of their title and recovery of possession of the plaint schedule property.

4. Written Statement was filed by respondents opposing the suit claim.

5. Trial concluded, and the matter was posted for arguments.

6. At that stage, petitioners filed I.A.No.340 of 2018 to re-open the suit; and I.A.No.341 of 2018 under Order 16 Rules 1 and 2 of Civil Procedure Code, 1908 to summon the Tahsildar, Mahabubabad and the Revenue Divisional Officer (R.D.O.), Mahabubabad, and to direct the latter to produce the office proceedings dt.09.12.1995 relating to issuance of 'Occupancy Rights Certificate' in favour of one Smt. Ankati Kanthamma; and to direct the Tahsildar, Mahabubabad to produce Record of Rights for the file No.B/955/1989 through which pattadar pass book and title deed had been issued in favour of Smt. Ankati Manjula, for examination and verification.

7. It is contended that in the affidavits filed in support of these applications the respondents had got marked Exs.B.8 to 12, and Exs.B.27 to 59, allegedly issued by the Revenue Officials; and so it was necessary to summon the Tahsildar, Mahabubabad and the Revenue Divisional Officer (R.D.O.), Mahabubabad to produce the said records to know the authenticity of the said documents.

8. Counter-affidavit was filed by respondents opposing the said applications. They contended that at the stage when the suit is posted for arguments these applications had been filed; that an additional Written Statement had been filed by respondents stating the grant of 'Occupancy Rights Certificate' under Sections 4 and 10 of the Andhra Pradesh (Telangana Area) Inams Abolition Act, 1955 to an extent of Acs.2.23 guntas in Survey Nos.324 and 325 vide proceedings Rc.No.F/K1/3014/95 dt.09.12.1995, issued by the Revenue Divisional Officer, Mahabubabad; that the 1st respondent thus acquired title to the suit schedule property; that the proceedings granting 'Occupancy Rights Certificate' to 1st respondent had been challenged before the Appellate Authority, i.e., the Revenue Divisional Officer, Mahabubabad, by the petitioners and the same was dismissed; and that there is no necessity to summon the files for verification.

9. By common order dt.05.02.2019, the Court below dismissed these applications. It held that in the Written Statement filed on 23.04.2010 itself the factum of grant of 'Occupancy Rights Certificate' under the said statute had been mentioned, and thereafter,

the petitioners had amended the plaint and challenged the same; that evidence had been adduced by respondents in support of their claim; that petitioners were aware of the orders passed by the Revenue Divisional Officer and the Joint Collector, Mahabubabad, Warangal even before the filing of the suit; and at the stage when the matter was posted for submitting arguments, these applications have been filed belatedly.

10. Assailing the same, the present Civil Revision Petitions are filed.

11. The counsel for petitioners contended that grave prejudice would be caused to petitioners if the said officials are not summoned to produce the said records for re-opening the suit.

12. He also placed reliance on the decisions in **Sidda Lingamma vs. Sidda Lingamma and others¹**, **Addagatla Narendar vs. Vijayalakshmi²** and **Yasodamma and another vs. Inderchand Vimalchand Jain and two others³**, and contended that under Order 16 Rules 1 and 2 of Civil Procedure Code, 1908 there is a procedure prescribed by law and parties ought to be permitted to avail the same, and applications filed for the said purpose cannot be rejected on the ground that the matter is posted for arguments.

¹ 2005 (2) A.L.D. 115

² (2006) 3 A.L.D. 94

³ 1973 S.C.C. Online KAR. 290

13. In the instant case, the suit is filed for declaration of title and recovery of possession. Therefore, the petitioners ought to succeed on the strength of their own case.

14. Instead they filed these applications specifically mentioning that in the evidence of respondents they had marked Exs.B.8 to 12, and 57 to 59; and to know the authenticity of the documents, it is necessary to summon the Tahsildar and the Revenue Divisional Officer, Mahabubabad by re-opening the suit. Thus, it is clear that petitioners wanted to destroy the case set-up by respondents about the acquisition of title pursuant to the 'Occupancy Rights Certificate' issued under the Act by the Revenue Officials. So their plea cannot be entertained.

15. Admittedly, a direct attack by petitioners on the 'Occupancy Rights Certificate' issued to 1st respondent had failed before the Revenue Divisional Officer and the Joint Collector, and it is stated that a Writ Petition is pending in this Court where the said issue is being considered.

16. The petitioners cannot make any collateral attack on the orders issued in favour of 1st respondent granting 'Occupancy Rights Certificate' in the Civil Suit, and have to await decision in the Writ Petition.

17. Since the suit is of the year 2009 and it has been pending for the last ten years and since the Court below has found that petitioners

were aware of the grant of 'Occupancy Rights Certificate' to the 1st respondent even prior to the filing of the suit, the Court below did not commit any error of jurisdiction in refusing to re-open the suit which is posted for submitting of arguments and in refusing to summon the Tahsildar and the Revenue Divisional Officer, Mahabubabad at the instance of petitioner.

18. Accordingly, the Civil Revision Petitions fail and they are dismissed. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.04.2019

Ndr/*

