

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2176 of 2011

ORDER:

This Revision is filed challenging the order dt.29.04.2011 in O.S.No.8 of 2007 of XI Junior Civil Judge, City Civil Court, Secunderabad.

2. Petitioner herein is the 4th defendant in the above suit.
3. The 1st respondent/plaintiff filed the said suit against the petitioner and other defendants for a Perpetual Injunction restraining them from interfering with his alleged peaceful possession and enjoyment of the suit schedule property.
4. Written statement was filed only by the petitioner and defendants 1 to 3/respondents 2 to 4 remained *ex-parte*.
5. After completion of trial in the suit and after hearing the arguments on both sides, the Court below passed the following order:

“.....On perusing entire record and after hearing both the parties respective counsel this Court is of the opinion it is necessary to examine Sri Raghu Ram Reddy who is the common vendor of plaintiff and defendant No.4. To decide the dispute between the parties it is very important to examine above said Sri Raghu Ram Reddy/D1. Therefore by

invoking provision Or.XVI Rule 14 of CPC and Sec. 151 of CPC matter is reopened. Issue witness summons to Sri Raghu Ram Reddy call on 06.05.2011.”

6. Assailing the same, this Revision is filed.

7. Counsel for the petitioner contends that the 1st respondent was not able to prove that he was in possession of the property on the date of filing of the suit, and the Court below could not have summoned the 1st defendant/2nd respondent, who is no doubt the common vendor of both the petitioner and the 1st respondent, to come and depose in the matter by invoking Order XVI Rule 14 CPC as he had already been set *ex parte*. According to him this would only help the 1st respondent. Counsel for petitioner also placed reliance on the judgment in ***Loyola Public School Society, Secunderabad v. P.Anil Kumar and others***¹ in support of his submission.

8. Counsel for the 1st respondent refuted the said contentions and stated that the Court has power under Order XVI Rule 14 CPC to summon any person to be a witness, if it thinks it necessary to do so, and such exercise or discretion by the Court below cannot be curtailed on the

¹ 2008(1) ALD 8

ground that the person who is sought to be summoned has been set *ex-parte* in the Court below.

9. Order XVI Rule 14 CPC states as under:

“Court may of its own accord summon as witnesses strangers to suit: Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.”

10. A reading of the above provision indicates that the Court at any time if thinks it necessary to examine any person including a party to the suit to come and give evidence, it can do so on its own motion. No exception is carved out in this provision to the parties, who are set *ex-parte* by the trial Court.

11. In ***Public School Society, Secunderabad***’s case(1 supra) cited by the counsel for petitioner, the 2nd defendant in the suit was examined as a Court witness though he had been set *ex-parte* and this Court expressed surprise over the same and eschewed the evidence of said witness. It held that

the Court below, in that case, did not care to know the necessity to examine that witness.

12. But the Court, in the said case, had considered Order XVI Rule 14 CPC and has laid down that Court has ample discretion to call either of the parties to the suit as a witness or any person as a witness so as to ascertain the truth. The opinion as regards the necessity of such examination, it held must be formed only after the parties to the suit adduced evidence. This is exactly the *scenario* in the instant case too.

13. When there is no such restriction in Order XVI Rule 14 CPC prohibiting a party, who is set *ex-parte*, to be summoned as a Court witness, no such prohibition can be implied in the said provision of law either.

14. Therefore, the impugned order does not suffer from any infirmity and does not warrant any interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

15. However, counsel for the petitioner states that the 1st defendant/2nd respondent had filed an affidavit in lieu of chief examination at a later point of time. This is not permissible.

16. The 1st defendant/2nd respondent has been summoned by *the Court to put questions to him* and therefore the witness shall answers the questions put to him by the Court only, and he shall not file any affidavit in lieu of chief examination, and any such affidavit already on record shall be eschewed from consideration. However, the 1st respondent as well as the petitioner would be entitled to cross-examine the said witness, if they so desire. Since the suit is of the year 2011, the Court below shall expedite the hearing of the suit and endeavour to decide it by 31.12.2019.

17. The Civil Revision Petition is disposed of with the above directions. No order as to costs.

18. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

11th July, 2019.

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