

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CR.P.No.3694 of 2018

ORDER:

This Revision is filed assailing the order dt.02.04.2018 in I.A.No.152 of 2017 in O.S.No.488 of 2015 of the I Additional District Judge, Ranga Reddy District at L.B.Nagar-cum-Metropolitan Sessions Judge, Cyberabad.

2. Petitioner is the defendant in the said suit filed by the respondents against him for specific performance of an Agreement of Sale dt.27.12.2010 and Supplementary Agreement dt.25.07.2012, and for a Perpetual Injunction.

3. Summons were issued to the petitioner and were recorded as having been served on the petitioner, on the basis of which petitioner was set *ex-parte* on 06.06.2015.

4. Thereafter PW1 was examined on 25.08.2015 and 13 documents were marked.

5. Petitioner then filed on 30.01.2016, I.A.No.152 of 2017 invoking Order IX Rule 7 CPC stating that intentionally petitioner's address was given wrongly as A-1, E.C. Kushaiguda, Hyderabad, though he is a resident of B-72, Sainikpuri, 4th Cross, Secunderabad; that the Court Bailiff was managed by the respondents; and an endorsement obtained on summons copy as if it was served to the petitioner by forging the signature of the petitioner.

Petitioner therefore contended that he never received summons in the suit; that the suit itself was filed by playing fraud; and that the respondents were continuing to play fraud on the Court. He also claims that he came to know about the same in the previous week through his neighbours; that he had already sold the suit schedule property in favour of another party on 24.09.2015; and therefore sought that the order dt.16.06.2015 setting him *ex-parte* in the suit be set aside.

6. Counter affidavit was filed by the 4th respondent/4th plaintiff opposing the said application. He contended that summons in the main suit as well as notice in the injunction application were received by the petitioner personally on 23.05.2015 as is evident from the Court record, and that the trial Court did not commit any error in setting him *ex-parte*, when he did not attend the Court. It was also stated that the report of the Process Server was true and correct.

7. He further contended that it was proper to direct the petitioner to attend the Court and to give his specimen signature and thumb impressions so that the signature on the I.A. and on the Vakalath filed along with the I.A., and the signature of the petitioner on the summons in the suit and on the notice in the injunction application and also on the warrant of injunction can be compared by sending them to an expert.

8. By a cryptic order dt.02.04.2018 the Court below dismissed the said I.A., simply recording the defence of the respondents that the petitioner's allegations are all false and stating that no material is brought on record to state that the petitioner was not served with the summons in the suit.

9. Assailing the same, this Revision is filed.

10. Counsel for petitioner contended that substantial immovable property is the subject matter of the suit and grave prejudice has been caused to the petitioner by the refusal of the Court below to set aside the order dt.06.06.2015 setting the petitioner *ex-parte*. He further contended that no enquiry was conducted by the Court below and no opportunity was given to the petitioner to lead evidence in support of the petitioner's contention that his permanent residence was at B-72, Sainikpuri, Secudnerabad since 1977, but the respondents gave wrong house number i.e., A-1,E.C.Kushaiguda, Hyderabad. He also contended that specific plea was raised by the petitioner that his signature was forged and this matter also ought to have been enquired into, particularly, when the respondents' in their counter came forward asking that the petitioner's alleged signature on the summons, notice in the injunction application and on the warrant of injunction be compared with the specimen signatures of the petitioner on the I.A. and the Vakalat by sending them to an expert.

11. Counsel for the respondents sought to contend that the order passed by the Court below is correct and there is no truth in the allegations leveled by the petitioner about his address being different from that shown in the suit.

12. Order IX Rule 7 CPC reads as under:

“7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance— Where the Court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.”

13. Thus, while considering the application under Order IX Rule 7 CPC the Court has to consider whether good cause has been shown by the defendant for his previous non-appearance.

14. Non-service of summons would certainly be a good cause, if the said fact is established by the defendant.

15. When the petitioner has specifically alleged that his signature was forged on the Process Server's report as well as on the summons in the injunction petition, warrant of injunction, and that his address was different from that shown in the plaint, petitioner should have been afforded an opportunity by the Court below to establish the said facts.

16. More so, when the respondents are willing to have the signature purporting to be that of the petitioner on the summons in the suit, notice in the injunction application and warrant of injunction compared with the specimen signatures of the petitioner on the affidavit filed in I.A.No.152 of 2017 and on the Vakalat by sending the same to an expert.

17. Without giving the petitioner such opportunity to lead evidence, the Court below committed grave error in dismissing the I.A.No.152 of 2017 causing serious injustice to the petitioner.

18. Therefore, this Civil Revision Petition is allowed; order dt.02.04.2018 in I.A.No.152 of 2017 in O.S.No.488 of 2015 of the I Additional District Judge, Ranga Reddy District at L.B. Nagar-cum-Metropolitan Sessions Judge, Cyberabad is set aside; and the said I.A.No.152 of 2017 is remitted back to the Court below to give opportunity to both parties to adduce evidence regarding their respective pleadings in the said I.A., and then pass a reasoned order in accordance with law. This exercise shall be completed within a period of six (06) weeks from the date of receipt of a copy of this order. In the event the Court allows I.A.No.152 of 2017, PW-1 may be recalled and subjected to cross-examination by the petitioner, if he had not already been cross-examined in the suit. No order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th February, 2019.

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