

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1485 of 2016

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20-01-2016 in I.A.No.413 of 2015 in O.S.No.56 of 2008 of the Junior Civil Judge at Medak.

2. Petitioner herein is 1st defendant in the suit.
3. The 1st respondent/plaintiff filed the said suit for declaration of title and for perpetual injunction against the petitioner and 4th respondent.
4. According to 1st respondent, he purchased the suit schedule property from the 4th respondent/2nd defendant under registered sale deed dt.30-10-2013.
5. Summons in the suit were served on 4th respondent/2nd defendant, but she remained *ex parte*.
6. After the evidence on both sides was closed and the matter was posted for arguments, the legal representatives of the 1st respondent filed I.A.No.413 of 2015 invoking Order XVIII Rule 1 C.P.C. stating that they intend to examine the 2nd defendant, who was set *ex parte* since she is the vendor of the suit schedule property to the deceased 1st respondent, and they had expected that she would come and depose before the Court on behalf of the petitioner, but she did not do so.

7. Counter-affidavit was filed by petitioner opposing the said application stating that the matter is at the stage of arguments and respondents did not come to the Court with clean hands. He also contended that the application under Order XVIII Rule 1 C.P.C. is not maintainable.

8. By order dt.20-01-2016, the Court below allowed the said application and observed that there is no convincing reason to refuse the plea of respondents, and under Order XVI Rule 14 C.P.C. the Court has power to summon strangers to the suit also as witness when it feels that it is necessary in the interest of justice. It thus allowed the application.

9. Challenging the same, this Revision is filed.

10. Learned counsel for petitioner contended that the application I.A.No.413 of 2015 filed under Order XVIII Rule 1 C.P.C. cannot be maintained because the said provision deals with right to begin the evidence.

11. Though learned counsel for petitioner is correct in this regard, since the plea of respondents is to recall 2nd defendant to give evidence, it has to be construed as an application under Order XVI Rule 14 C.P.C. and mere quoting of wrong provision of law cannot disentitle the respondent Nos.1 to 3 to the relief.

12. The learned counsel for petitioner also contended that once the evidence is closed and respondents had not taken steps to call the

2nd defendant as a witness during their turn of evidence, they cannot now file an application after the matter is posted for arguments.

13. Respondent Nos.1 to 3 categorically stated in their plea that they expected the 2nd defendant to come and give evidence, when it was the turn of defendants to lead evidence, but since she did not do so, and the defendants' side evidence was closed on 04-12-2015, on 11-12-2015 I.A.No.413 of 2015 is filed. The said reason is a plausible reason and cannot be rejected outright. When the claim for title of respondent Nos.1 to 3 is dependent on the evidence of 4th respondent, and she not only remained *ex parte*, but also did not turn up to give evidence, petitioners are entitled to seek Court's intervention to summon her as a witness, and make her to give evidence in the suit by invoking Order XVI Rule 14 C.P.C.

14. I therefore 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.

15. The Civil Revision Petition fails and it is accordingly dismissed. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-04-2019
Vsv