

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CIVIL REVISION PETITION No.781 OF 2022

% Delivered on: 06-06-2022

Between:

Mr. Doni Ushaiah

.. Petitioner

Vs.

\$ Mr. Thota Bhooma Reddy & others

.. Respondents

! For Petitioner

: Mr. Sharad Sanghi

^ For Respondent No.1

: Mr. S. Chandra Sekhar

For Respondent Nos.2 & 3

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? Cases Referred

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1. 2016 (6) ALD 59
2. 2012 (6) ALT 636 (SB)
3. 2007 (1) ALT 652 (SB)

HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL REVISION PETITION No.781 OF 2022

ORDER:

This Civil Revision Petition is filed under Article - 227 of the Constitution of India, to set aside the order dated 02.03.2022 passed in I.A. No.31 of 2022 in O.S. No.34 of 2012 by the learned VI Additional District and Sessions Judge, Adilabad.

2. Heard Mr. Sharad Sanghi, learned counsel for the petitioner - defendant No.1 and Mr. S. Chandra Sekhar, learned counsel for respondent No.1 - plaintiff.

3. FACTS:

i) Respondent No.1 herein had filed a suit, vide O.S. No.34 of 2012 on the file of the VI Additional District and Sessions Judge, Adilabad, against the petitioner herein - defendant No.1 and respondent Nos.2 and 3 herein - defendant Nos.2 and 3 for declaration to declare him as adoptive son of late Thota Pothanna and Thota Rukma Bai; to declare him as owner of the suit schedule properties viz., Survey No.6/F, measuring Acs.7.13 guntas; Sy.No.13/G, measuring Acs.2.00 guntas and Sy.No.14/D,

measuring Acs.1.38 guntas and House No.2-73, situated at Bhoraj Village, Jainath Mandal, Adilabad District; cancellation of *ex parte* decree dated 24.03.2011 passed in O.S. No.93 of 2010 and the consequential order dated 28.04.2011 passed by defendant No.3; and for perpetual injunction.

ii) In the said suit, the evidence of the plaintiff was closed and the petitioner herein - defendant No.1 had examined three (03) witnesses. The said suit is coming up for arguments. At that stage, the petitioner herein - defendant No.1 had filed an application vide I.A. No.31 of 2022 in O.S.No.34 of 2012 under Order - XVI , Rules - 1 and 5 read with 151 of the CPC to issue summons to the Tahsildar, Tamsi, with a direction to bring the original 1B ROR *Namuna* Certificate, *Pahanies* pertaining to Survey Nos.105/A, 105/AA and 105/AA/1 and to submit National Food Security Cards Ration Card No.365320009924, FSC Ref.No.ALD523072465039 stands in the names of respondent No.1 herein and Thota Lasum Bai, and to give evidence, on the following grounds:

a) Respondent No.1 herein - plaintiff is not the adopted son, nor residing at Bhoraj Village. He is the resident of

Tamsi Village having lands in Survey Nos.105/A, 105/AA and 105/AA/1 and also Voting Right;

- b) To prove the same, summoning of the aforesaid documents and giving evidence by Tahsildar, Tamsi Mandal are relevant;
- c) Ration Card pertaining to respondent No.1 herein is also relevant; and
- d) He has filed a petition under Right to Information Act (for short 'RTI') before the Tahsildar, Tamsi Mandal on 10.02.2022 seeking the aforesaid information, but the same was not furnished to him;

iii) Respondent No.1 herein - plaintiff opposed the above said petition on the following grounds:

- a) The petitioner herein has filed a similar petition on 30.11.2021 which was returned by the Court below on the ground of non-compliance of the mandatory requirements of Rule - 129 of the Civil Rules of Practice (for short 'CRP');

- b) Even now, the petitioner herein had not complied with the said conditions;
- c) The plaintiff's evidence was closed on 05.03.2020.
- d) The petitioner herein filed his affidavit in lieu of chief-examination on 24.03.2021 and the same was closed on 24.11.2021;
- e) Thereafter, the petitioner herein had filed a petition on 30.11.2021 and the same was withdrawn by him;
- f) Thereafter, DW.2 filed his affidavit in lieu of chief-examination on 21.12.2021 and he was present for cross-examination on 06.01.2022;
- g) At that stage, the petitioner herein had filed I.A. No.31 of 2022 on 21.02.2022;
- h) The petitioner herein has not mentioned satisfactory reasons;
- i) The documents sought to be summoned/produced from the Tahsildar, Tamsi Mandal do not pertain to the suit schedule properties;

- j) The natural parents of respondent No.1 herein own a house and properties etc., at Tamsi Village and he has elder brother;
- k) After adoption, respondent No.1 herein has been staying at Bhoraj Village as adopted son of Thota Potanna and Rukma Bai;
- l) The petitioner herein is also claiming that he is adopted son of the aforesaid persons i.e., Thota Potanna and Rukma Bai;
- m) The petitioner herein has to prove his adoption, Will Deed and ownership as the burden of proof is on him. He has filed Adoption paper and Will Deed which are already on record;
- n) Respondent No.1 herein has got property at Tamsi Village which is vested property of his natural parents. As per the Hindu Law, vested property will continue even after adoption as it will not be divested; and
- o) Respondent No.1 herein has been visiting Tamsi Village for meeting the requirements of his natural family members.

iv) The Court below dismissed the said petition vide impugned order dated 02.03.2022 on the following grounds:

- a) The petitioner herein has filed similar application earlier which was returned on the ground of non-compliance of Rule - 129 of the CRP;
- b) Even now, the petitioner herein has not complied with the said mandatory requirements under Rule - 129 of the CRP;
- c) He has filed an application under RTI to the Tahsildar, Tamsi Mandal;
- d) The application filed under RTI Act is different from the application filed before the Court seeking to certified copies;
- e) The dispute is with regard to the adoptive son;
- f) Both the petitioner herein and respondent No.1 herein are claiming that they are the adoptive son of the deceased parents;

- g) Respondent No.1 himself admits that his natural parents are at Bhoraj Village, whereas his adoptive parents are at Tamsi Village;
- h) Even after the adoption, respondent No.1 herein is maintaining relationship with his natural parents and family members. Therefore, he uses to stay both at Tamsi Village and Bhoraj Village. In view of the same, there is no need to summon the Tahsildar, Tamsi Mandal along with production of documents as sought by the petitioner herein;
- i) The land in Survey No.105 is not the suit schedule property.
- j) Therefore, the documents sought to be summoned/produced from the Tahsildar, Tamsi Mandal are not relevant.

4. **CONTENTIONS OF THE PETITIONER:**

- i) Mr. Sharad Sanghi, learned counsel for the petitioner, would submit that the Court below has erroneously dismissed the application filed by the petitioner herein without considering the factual aspects and law.

ii) He would further submit that no prejudice would be caused to respondent No.1 herein in the event of allowing the said application and summoning the documents from the Tahsildar, Tamsi Mandal.

iii) The impugned order is contrary to the provisions of Order - XVI, Rules - 1 and 5 of the CPC.

iv) With the aforesaid submissions, he sought to allow the revision.

5. CONTENTIONS OF RESPONDENT No.1:

Mr. S. Chandra Sekhar, learned counsel for respondent No.1 would submit that the Court below has rightly dismissed the application filed by the petitioner herein on consideration of both the facts and law. It is a reasoned order and does not warrant interference by this Court.

6. ANALYSIS AND FINDING OF THE COURT:

i) The above rival submissions and the record would reveal that respondent No.1 herein – plaintiff had filed the suit vide O.S. No.34 of 2012 against the petitioner herein and respondent Nos.2 and 3 herein seeking the aforesaid reliefs. It is not in dispute that

the plaintiff's evidence was closed on 05.03.2020. The petitioner herein - defendant No.1 was examined as DW.1 and his evidence was over on 24.11.2021 itself. He has filed a similar application earlier which was returned by the Court below on the ground of non-compliance of mandatory requirement of Rule - 129 of the CRP. Thereafter, the petitioner herein had filed an application under RTI before the Tahsildar, Tamsi Mandal seeking the aforesaid documents. The said application is pending. During the pendency of the said application and without waiting for the said documents, the petitioner herein had filed I.A. No.31 of 2022 in O.S. No.34 of 2012 under Order - XVI, Rules - 1 and 5 read with Section 151 of the CPC seeking to issue summons to the Tahsildar, Tamsi Mandal with a direction to produce the aforesaid documents and also to give evidence to the said effect.

ii) In view of the same, it is relevant to extract Rule - 129 of the CRP and Order - XVI, Rules 1 to 5 of the CP, which are as under:

“129. (76) Production of records in the custody of a Public Officer other than a court:-

- (1)** A summons for the production of records in the custody of the Public Officer other than a court shall be in Form No. 23 and shall be

addressed to the Head of the office concerned and in the case of a summons to a District Registrar or a Sub-Registrar of Assurances, it shall be addressed to the Registrar or Sub Registrar in whose office, or sub-office, as the case may be, the required records are kept.

Provided that, where the summons is for the production of village accounts, including filed measurement books, such summons shall be addressed to the Tahsildar or the Deputy Tahsildar in independent charge as the case may be.

Provided further that when the summons is for production of records in the custody of high dignitaries like the Speaker of the Lok-Sabha or State Legislative Council etc., the summons shall be in the form of a letter of request in Form No. 23-A.

- (2) Every application for such summons shall made by an affidavit setting out (1) the document or documents the production of which is require; (2) the relevancy of the document or documents; and (3) in cases where the production of a certified copy or copies and the result of such application.
- (3) No court shall issue such summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The court shall in every case record its reasons in writing and shall require the applicant to deposit in court, before the summons is issued, to abide by the order of the court, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.
- (4) On production of the document in obedience to the summons, the court, unless it thinks it necessary to retain the original, shall direct a copy to be made at the expense of the applicant, and shall with all convenient speed return the original retaining the copy.
- (5) Unless the court requires the production of the original, every such summons to a public officer shall state that he is at liberty to produce, instead of the original, a copy certified in the manner prescribed by section 76 of the Evidence Act.

- (6) Nothing in the above rules shall prevent a court of its own motion from issuing a summons for the production of public records or other documents in the custody of Public Officer in accordance with sub-rule (1), if it thinks it necessary for the ends of justice to do so. The court shall, in every case, record its reasons in writing.”

“ORDER – XVI

Summoning and attendance of witnesses:

1. List of witnesses and summons to witnesses.—(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

1A. Production of witnesses without summons.—A Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.

2. Expenses of witness to be paid into Court on applying for summons.—(1) The party applying for a summons shall, before the

summons is granted and within a period to be fixed 3 [which shall not be later than seven days from the date of making applications under sub-rule (4) of rule 1] pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts.—In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses.—Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

(4) Expenses to be directly paid to witnesses.—Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.

3. Tender of expenses to witness.—The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. Procedure where insufficient sum paid in.—(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons, or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witnesses detained more than one day.—Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Time, place and purpose of attendance to be specified in summons.—Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

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iii) Thus, for the purpose of summoning a Public Officer, compliance of the following conditions are mandatory:

- (a) Document / documents the production of which is required, shall be set out in the affidavit;
- (b) Relevancy of the document / documents shall be explained in the affidavit.

(c) In cases where the production of a certified copy would answer the purpose, whether application was made to the proper officer and the result of such application shall also be indicated in the affidavit.

iv) It is also relevant to note that under Sub- Rule (3) of Rule - 129 of the CRP, no Court shall issue summons unless it considers the production of the original document is necessary or is satisfied that the application for a certified copy has been duly made and has not been granted.

v) It is also relevant to note that the High Court of Andhra Pradesh at Hyderabad has considered the said aspect in **Vooda Venkat Rao v. Vooda Surya Ramu @ Surya Rao**¹. In the said case, the mandatory conditions of Rule - 129 of the CRP and the scope and ambit of Order - XVI, Rules - 1(2) and 6 of CPC were considered and it was held that in the absence of compliance of the said conditions, the parties are not entitled to seek summoning the documents from a Public Officer.

¹. 2016 (6) ALD 59

vi) In **Shaik Ujauddin v. Veerabhadra Uma Devi**², the High Court of Andhra Pradesh at Hyderabad held that summoning of public servants under Order - XVI, Rule - 1 of CPC cannot be invoked by private parties to summon public servants without adducing proper and relevant evidence to prove their case. It was further held that a private party, in order to substantiate his own plea, cannot seek to drag the Government officials to the Court as that would involve waste of precious time of the officials. Order - XVI Rule 1 of the CPC is not meant for helping litigants who fail to adduce proper and relevant evidence to prove their case and rely solely on the basis of the testimony of public servants. The predominant object of this provision is to enable the Court to summon any witness if it feels that the evidence of such person is necessary for proper and effectual adjudication of the dispute involved in the suit. It is not as if the lower Court, on application of its mind, has felt that the evidence of the Tahsildar is needed for adjudication of the dispute involved in the suit. In a suit involving disputes over immovable properties between two private parties, the Courts shall not ordinarily summon public servants to support

². 2012 (6) ALT 636 (SB)

the cause of one party unless the Court itself is of the opinion that the evidence of such public servant is required to adjudicate on the seriously disputed questions arising in the suit.

vii) In **V. Rajeshwar v. N. Gurucharanam**³, the High Court of Andhra Pradesh at Hyderabad held that a witness cannot be summoned to let in evidence not supported by pleadings.

viii) In view of the law laid down in the above referred judgments and also in view of the above said discussion, coming to the case on hand, as stated above, respondent No.1 herein – plaintiff had filed the above suit against the petitioner herein and respondent Nos.2 and 3 seeking the aforesaid reliefs. The earlier application filed by the petitioner herein was returned by the Court below on the ground of non-compliance of the mandatory requirement of Rule - 129 of the CRP. Even now, the petitioner herein has not complied with the said mandatory requirement. He has only filed an application under RTI Act. He has not waited for the outcome of the said application. If Public Officials fail to furnish documents as sought by the applicant under the RTI Act

³. 2007 (1) ALT 652 (SB)

within the stipulated time, the applicant has an alternative and efficacious remedy under the said Act. In the case on hand, the petitioner herein has not availed the said remedy. However, it is relevant to note that the application filed under RTI Act is different to the application filed seeking certified copies of the documents. As observed by the Court below, an application under RTI Act cannot be equated with an application filed seeking certified copies of documents.

ix) It is also relevant to note that the land in Survey No.105 of Tamsi Village is not the subject matter of the aforesaid suit in which the petitioner herein sought to be summoned / produced the aforesaid documents, and the dispute is with regard to the adoption as to whether the petitioner or respondent No.1 herein is the adoptive son of the deceased parents. Therefore, the parties have to establish their own claim basing on the strength of documents that would be produced by them before the Court below. The petitioner herein cannot seek for summoning a Public Officer to give evidence along with documents as held in **Shaik Ujauddin**².

7. CONCLUSION:

i) In view of the above discussion, the Court below having considered all the above aspects dismissed the petition under impugned order. There is no error in it. The impugned order is a reasoned one and does not warrant any interference by this Court. Thus, the revision fails and liable to be dismissed.

ii) The Civil Revision Petition is accordingly dismissed confirming the order dated 02.03.2022 passed in I.A. No.31 of 2022 in O.S. No.34 of 2012 by the learned VI Additional District and Sessions Judge, Adilabad.

iii) In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision shall stand closed.

K. LAKSHMAN, J**6th June, 2022**

Note: L.R. copy to be marked.
(B/O.) Mgr