2023:APHC:18720

HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE FOURTEENTH DAY OF JUNE

TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

CIVIL REVISION PETITION NO: 4726 OF 2018

Between:

1. Kotti Venkata Lakshmi Narasimha Rao S/o.Late Jagtannadha Rao, Hindu, R/o.Rajahmundry, East Godavari District

...PETITIONER(S)

AND:

1. Kotti venkata Ramakrishna S/o.Late Gagannadha Rao, Hindu, R/o.lakkavaram, Malkipuram Mandal, East Godavari District
2. Kotti Rajyalakshmi W/o. Late Kotti Venkata Ramakrishna, Aged about 60 years, Housewife, R/o. Lakkavaram Village, Malkipuram Mandal, East Godavari District.
3. Kotti Sai Venkata Jagannadh S/o. Late Kotti Venkata Ramakrishna, Aged about 32 years, R/o. Lakkavaram Village, Malkipuram Mandal, East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): RAMA MOHAN PALANKI

Counsel for the Respondents: P DURGA PRASAD

The Court made the following: ORDER

2023:APHC:18720

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

+ CIVIL REVISION PETITION No.4726 of 2018

Between:

Kotti Venkata Lakshmi Narasimha Rao

... Petitioner

And

$ Kotti Venkata Rama Krishna,
S/o. Late Jagannadha Rao and 2 others.

.... Respondents

JUDGMENT PRONOUNCED ON **14.06.2023**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes –

DR.JUSTICE K. MANMADHA RAO

2023:APHC:18720

* **THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

+ CIVIL REVISION PETITION No.4726 of 2018

% 14.06.2023

Between:

Kotti Venkata Lakshmi Narasimha Rao

… Petitioner

And

$ Kotti Venkata Rama Krishna,
S/o. Late Jagannadha Rao and 2 others.

…. Respondents

! **Counsel for the Petitioner** : Sri P. Rama Mohan

^Counsel for Respondent: Sri P. Durga Prasad

<Gist :

>Head Note:

? Cases referred:

1. 2022 LawSuit (SC) 771
2. (2003) 9 Supreme Court Cases 234
3. (2011) 1 Supreme Court Cases 117
4. Law Finder Doc Id#1953566
5. 2015 (6) ALT 71 (S.B)
6. (2009) 4 Supreme Court Cases 410
7. 1988 (1) ALT 279
8. 1999 (6) ALD 789
9. 2002 Tlmad-0-338 (The Laws)

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION No.4726 of 2018

ORDER:

This Civil Revision Petition is preferred against the order, dated 20.07.2018 passed in I.A.No.425 of 2018 in O.S.No.21 of 2015 on the file of X Additional District Judge, Narsapur (for short "the trial Court").

2. Heard Sri P. Rama Mohan, learned counsel appearing for the petitioner and Sri P. Durga Prasad, learned counsel appearing for the respondents.

3. The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit in O.S. No.21 of 2015 which was filed for grant of partition. The present impugned I.A.No.425 of 2018 was filed before the trial Court by the petitioner under Order 16 Rule 14 CPC seeking to issue summons to the Manager, Andhra Bank, Narsapur to produce original Will dated 18.9.1992 to proceed with the trial of the suit. The same was dismissed by the trial Court vide order dated 20.07.2018 on the ground that there are no bonafides on the part of the petitioner to file the petition either on facts or under law to issue summons to produce the document. Aggrieved by the same the present civil revision petition is filed.

4. As seen from the material, it is observed that, this Court, vide order dated 21.08.2018, has granted interim stay as prayed for, and the same is extended from time to time. It is also observed that the sole respondent/plaintiff died, the respondents No.2 and 3 were brought on record as legal representatives of the deceased-sole respondent/plaintiff vide order dated 27.3.2023 passed by this Court in I.A No.1 of 2023.

5. Learned counsel for the petitioner submits that the petitioner filed the I.A No.425 of 2018 under Order 16 Rule 14 CPC seeking to issue summons to the Manager, Andhra Bank, Narsapur to produce original Will dated 18.9.1992 as the said Will is very necessary to prove his case. However, the trial Court dismissed the said application erroneously. He further submits that the petitioner mainly relied on the registered Will dated 18.9.1992, so it is very crucial document to decide the matter between the parties. Unless and until, the said document is produced before the court and proved the averments in the document, the petitioner will not succeed his claim. One of the issues in the suit that the registered Will dated 18.9.1992 is valid or not, so the duty casted upon the petitioner/defendant to produce the said Will and proves the same in the Court of law to prove his bonafides. But, the trial Court failed to appreciate either of the parties have not filed any list of witness and documents at

the time of settlement of issues. He further submits that the Court below ought to have allow the petition and permit the petitioner to produce the Will dated 18.09.1992 and examine the validity of the Will in the interest of justice. Hence requests this Court to pass appropriate orders by setting aside the impugned order.

6. On the other hand, learned counsel appearing for the respondents submits that the present revision petition is not maintainable under law. The respondent/plaintiff filed his affidavit in the form of examination in chief on 9.3.2018 and the respondent took several adjournments for his cross examination. The said I.A. has been filed on 8.6.2018 to drag on the disposal of the suit at belated stage. The father of the respondent never revoked the Will dated 14.9.1987. He further submits that the petitioner has no right to sell the schedule property as it is their joint property. Lokam venkateswara Rao has no right to purchase the property and he is only binami to the petitioner. He further submits that the petitioner even did not mention the date and month of sale and registration of the property to Lokam Venkateswara Rao. Hence, as the preset revision is not maintainable, prayed to dismiss the same.

7. On hearing the submissions, this Court observed that the suit was filed by the respondent/plaintiff for grant of partition of the plaint schedule property. When the matter came up for trial,

the affidavit of respondent/plaintiff was filed on 9.3.2018 and the matter underwent several adjournments for cross examination of PW.1. After taking several adjournments for cross examination of PW.1, the petitioner filed this petition on 8.6.2018 to issue summons that the registered Will dated 18.9.1992 is necessary for cross examination of PW.1. Admittedly, the petitioner did not file any list of witnesses and documents which is mandatory as per Order 16 rule 14 CPC immediately at the time of settlement of issues.

8. Learned counsel for the petitioner has relied upon a catena of decisions of Hon'ble Supreme Court reported in (i) **M/s. Ramnath Exports Pvt Ltd., Versus Vinita Mehta &another**[1], wherein the Hon'ble Apex Court held that :

> *The contention of the appellant with vehemence is that the application CLMA seeking permission to file joint appeal against common judgment and two decrees has not been decided by the impugned order, though at the time of admitting the appeal and issuing notice, objections were called. In the counter affidavit filed by the respondent even before this Court, the said fact has not been contested or refuted. In the order, it has also not been mentioned that dismissal of the appeal would lead to decide all pending applications including CLMA. As per record, it is clear that the High Court admitted the appeal on 18.07.2008 and CLMA was awaiting its fate for almost about a decade. By the impugned order passed on 04.07.2018, first appeal was dismissed accepting the preliminary objection regarding maintainability applying the principle of resjudicata. There is not even any without observation that permission as sought to file one appeal cannot be granted. The record indicates that the CLMA filed by the appellant seeking permission to file one appeal was not decided. It is to observe, once at the time of admission of first appeal, despite having objection of maintainability it was admitted asking reply and rejoinder on CLMA, the High Court ought to have decided the said application.*

[1] 2022 LawSuit(SC) 771

(ii) In **Collector of Central Excise, Calcutta Versus Pradyumana Steel Ltd**.,[2], wherein the Hon'ble Apex Court held that:

> *It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23-6-1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law.*

(iii) In **Coal India Limited and another Versus Ujjal Transport Agency and others**[3], wherein the Hon'ble Apex Court held that :

> *The filing of an application for condonation under a wrong provision of law will not vitiate the application. In fact though the application for condonation of delay was initially filed under Section 5 of Limitation Act, that was subsequently replaced by an application under Section 34(3) of the Act, and again by an application under Section 34(3) of the Act read with Section 14 of the Limitation Act.*

10. In another decision of Telangana High Court in a case reported in **Cargill India Pvt. Ltd Versus Krishnapatnam Port Company Ltd., and Others**[4], wherein it was held that:

> *It is stated by learned senior counsel that there is no laxity in filing the documents earlier and now it is necessitated to file in response to the questions posed to PW-1 during the cross- examination, and inasmuch as the documents are very much necessary for the purpose of just decision of the suit, the Court 2 below ought to have allowed the application as no prejudice would be caused to the respondents as they will have opportunity to file objections, if any.*

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[2] (2003) 9 Supreme Court Cases 234
[3] (2011) 1 Supreme Court Cases 117
[4] Law Finder Doc Id # 1953566

11. In another decision of High Court of Judicature at Hyderabad in a case reported in **Matta Srirama Murthy Vs. Arepallii Srirama Murthy**[5], wherein it was held that :

> *No doubt the application filed ;by the respondent-defendant was under the wrong provision of law as Order 18Rule 4(3) CPC was not relevant and the application ought to have been filed under Order 26 Rule 4 CPC. However it is trite that mere mention of a wrong provision is of no consequence when the Court is vested with the required power under another provision of the statute. The Court below took note of this wsettled position of law and dealt with the I.A accordingly.*

From a reading of the above decisions filed by the petitioner are not at all connected to the present facts of the case.

12. It is to be noted that as per decision of this Court passed in C.R.P. Nos.3292, 2694 and 5319 of 2015, dated 7.02.2020, held that :

> "Therefore, there is justification to produce this Will and the learned trial Judge could not have refused the request of the defendant only on the ground that Ex.B1 is already on record. The purpose of summoning Sub Registrar is also to prove the factum of deposit of this will. Thus, there is no justification for the trial Court to pass an order of such nature in I.A No.448 of 2014 and it has to be set aside."

13. In a case of **Vadiraj Naggappa Veernekar (dead) through L.Rs. Vs. Sharadchandra Prabhakar Gogate**[6], wherein the Hon'ble Supreme Court held that :

> *The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule*

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[5] 2015(6) ALT 71 (S.B.)
[6] (2009) 4 Supreme Court Cases 410

merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

17. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination

14. Having regard to the facts and circumstances of the case and on perusing the citations of Hon'ble Supreme Court as well as the High Court of Judicature at Hyderabad referred to above filed by both the counsels, from a reading of the above, the decisions filed by both the counsels are not at all connected to the present facts of the case. Further, it is not case under the wrong provision of law as per Order VIII Rule 1-A(3) of CPC and also under Order 18 Rule 17 CPC and also the application for condonation of delay under Section 5 of Limitation Act and also under Section 14 of Limitation Act and it cannot be possible to consider the same under wrong provision of law when the power is available to the Court even though under wrong provision by itself is not sufficient to condone the delay. Further this Court observed that Order 16 Rule 14 of Code of Civil Procedure, upon which emphasis is laid, reads as under:

"14. 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."
>
> The heading of the Rule makes it amply clear that the power to summon strangers to a suit, as witness is to be exercised by the Court "on its own accord". This idea is further strengthened by the phrases, "where the Court at any time thinks" and "the Court may, of its own motion", occurring in the body of the provision. This is not an instance of the aid of heading being taken to expand or restrict the meaning of the provision. In fact, both are at harmony, with each other."

Exercise of power by the Court on its own accord as well as, at the instance of parties would also be possible where, the language of the provision is not so clear on this aspect.

In P**.S. Chetty v. K.E. Reddy**[7], wherein this Court held:

> *Order 16 Rule 14 Code of CPC provides that the court may of its own initiative or suo motu cause any person to be examined as a witness though either of the parties did not choose to take steps for summoning such person as a witness. This power obviously intended in the interest of justice is aimed at clarifying certain situations and remove ambiguities and fill up lacuna and thereby further justice. The parties may refrain from summoning a crucial witness in the event of their apprehension of full fledged support and in such a situation the court may summon such person to give evidence to arrive at the correct factual picture and this witness is called a "court witness." Order 16 Rule 14 visualises the initiative by the court only to examine any person and it is for the court to consider of its own accord the necessity of invoking power under this rule without propulsion or application by the parties. The exercise of this power is in the nature of "self-starter" without extraneous pressure or pull.*

15. On a reading of the above, it is observed that, the Court is not obliged to invoke the power under that provision at the instance of the parties. However, a rider was added to the effect that an application filed by the parties invoking such a provision can be treated as a device of passing on the information, which

[7] 1988(1) ALT 279

may help the Court in forming an opinion, whether or not to exercise its power under Order 16 Rule 14 of Code of Civil Procedure. The relevant portion reads:

16. It is true that the court is not obligated to invoke the power at the instance of the parties and the parties have no right to move an application under this rule. But however either of the parties can bring to the notice of the court the necessity for examining any person as court witness. On such application the court may scan the totality of facts and circumstances apart from the situations projected by the parties and arrive at an independent conclusion as to the necessity of a court witness. The parties are not totally barred from bringing to the notice of the court by application or otherwise and the court is not bound to take action on the averments or allegations contained in the application and it is the sole discretion of the court. The application by the parties may be considered as passing on the information so that the court may examine the issue in depth on the facts and circumstances set out in the application and other aspects.

17. However, in subsequent judgments, this precedent was understood, as though the parties to the suit can insist on examination of an individual as a Court witness, under Order 16 of Rule 14 Code of Civil Procedure. The judgment in **Kosuru Kalinga**

Maharaju vs. Kosuru Kaikamma[8] case is one such. It was observed;

18. A reading of the above provision would leave no doubt in the mind to say that either party to the suit proceedings can summon person including a party to the suit who is not called as a witness by a party to the suit, as a witness.

19. Legislature has felt the need for a direct provision enabling the court to summon a party for giving evidence as a witness to help curbing the malpractice of a party not appearing as a witness and forcing the other party to call him as a witness, and adjudicate the issues properly. What is laid down in the above provision is that if the Court is satisfied about such a necessity to cause any person to be examined as a witness, Court can summon such person as a witness. The emphasis is laid on the subjective satisfaction of the Court. However, this power is to be exercised by the Courts guardedly and not as a matter of routine.

20. As could be seen, Order 16 Rule 14 of the Code of CPC empowers the Court to summon on its own any person to give evidence or to produce any document in his possession if the Court is satisfied that the evidence of such witness is necessary to arrive at a just conclusion. The said power includes to summon even a party to the proceeding. Though the language of Rule 14 shows

[8] 1999 (6) ALD 789

that such discretion has to be exercised by the court at its own motion, the law is well-settled that such a power can be exercised even on an application made by a party to the proceedings, since the application if any, can be taken as an information to the Court.

21. In **Varadharajan v. Saravanan**[9], wherein the Madras High Court has this to say about Order 16 Rule 14 of Code of Civil Procedure.

> "Para-7: Even in this rule, the power of the Court to examine the witnesses on his own motion, is discretionary. Ordinarily it is for the party to summon the witnesses necessary for his case and when the party has done everything in that regard, it is the duty of the Court to enforce their attendance. Only when it appears to the Court that the evidence of a particular witness is necessary for the proper adjudication of the suit, then only the Court may secure suo motu the attendance of such witness. This discretionary power under this Rule should not be used to help a party to tide over a real difficulty in examining that witnesses. When neither side has summoned the material witness to give evidence, the Curt is justified in refusing to call him as a Court witness after closure of evidence.
>
> Para-8: In fact, Rule 14 prior to amendment by the Amendment Act 1976, Court had power to summon as witnesses any person other than a party to the suit who had not been called as a witness by any party either to give evidence or to produce document. The Rule did not confer any express power on the Court to summon a party to the suit as a witness. But after the Amendment, 1976, the Court has been given express power to summon a party to the suit. Even if a party voluntarily appears in the witness-box to give evidence in his own favour and deliberately keeps himself away after examination-in-chief and before cross examination, the Court cannot exercise its power under the amended Rule also."

22. From the above discussion, what emerges is that, the power under Order 16 Rule 14 of Code of Civil Procedure, is to be exercised by a Court, on its own accord, and not on the insistence by a party to the suit. Though a party to the suit can place any information, which may impress upon or convince the Court to

[9] 2002 Tlmad-0-338 (The Laws)

exercise its powers under that provision, an independent application for that very purpose does not lie. If parties are permitted to make independent application for summoning of an individual as a Court witness and are conferred with the right to insist the Court to accede their request, it may lead to several complications. It can be used as a device to overcome their inability or failure to summon a witness, and in certain cases, to fill up the lacuna in the evidence, which is already on record. That was never the intention of the Parliament. If a party wants a particular individual be summoned or examined as witness, it must have recourse to Rules 1 and 1-A of Order 16 Code of Civil Procedure.

23. Further, this Court observed that the trial Court rejected the application on the ground that it cannot be compelled to examine a person as a Court witness, and it is always for the Court itself to take such steps, on its own accord.

24. In view of the foregoing discussion, this Court is of the opinion that the petitioner being party has no right to invoke power of the Court under Order 16 Rule 14 CPC to produce the document. Therefore there are no bonafides on the part of the petitioner to file the petition either on facts or under law to issue summons to produce the document and hence this Court do not find any illegality or illegality in the impugned order warranting

interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

25. Finding no merit in the instant revision petition and devoid of merits, the same is liable to be dismissed.

26. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

27. It is made clear that the interim order granted by this Court is hereby vacated.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

DR.JUSTICE K. MANMADHA RAO

Date: 14. 06.2023

Note : L. R Copy to be marked.
(b/o)Gvl.

THE HON'BLE Dr.JUSTICE K. MANMADHA RAO

C.R.P.No.4726 of 2018

Date: 14.06.2023.

Gvl