
(1999) 12 AP CK 0071
In the Andhra Pradesh High Court
Case No : CRP No. 1557 of 1999

Bathina Koteswara Rao

APPELLANT

Vs

Gollapudi Masthan Rao and others

RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 4, Order 16 Rule 6, Order 16 Rule 7

Citation : (2000) 1 ALD 611 : (1999) 6 ALT 733 : (2000) 1 APLJ 106 : (2000) 2 CivCC 245

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. G. Pedda Babu, for the Appellant; Mr. Ch. Dhananjaya, for the Respondent

Judgement

1. The petitioner filed a suit. Summons were issued to the defendants and without filing the written statement an application came to be filed by the defendants. They moved the application praying that an order passed by the Revenue Divisional Officer, Ongole and enquiry report of the Mandal Revenue Officer, Chinaganjam be called, The application was allowed by the following order:

"2-4-1999

For counter, Counter not filed. Petition is allowed. Summons to MRO, Chinaganjam."

2. This order has been challenged on the ground that without filing of written statement and without knowing what are the issues in dispute between the parties the documents could not be summoned by the learned Judge.

3. The learned Judge has not given any reasons for passing the order. The order on this ground alone could be set aside. However, the learned Counsel for the respondents submits that the Court has the power to pass such order under Order 14, Rule 4 of CPC, which is reproduced:

"Order XIV, Rule 4 CPC : Court may examine witnesses or documents before framing issues :--Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process."

4. A plain reading of the Rule would suggest that, that stage would come only after the written statement is filed and if on the basis of the pleadings the Court was of the opinion that issues could not be correctly framed he could summon a document. This stage has not at all reached in the present suit and there was no satisfaction of the learned trial Court that issues could not be framed without summoning the documents in question. Obviously, no such satisfaction could be recorded because no written statement was filed.

5. The learned Counsel has also relied on Order 16, Rule 6 of CPC which lays down:

"Order XVI, Rule 6 CPC : Summons to produce document :--Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same."

6. This Rule hardly helps the case of the respondents. Order 16 in itself is an order which deals with summoning and attendance of witnesses and this stage in a proceedings in a suit comes only after the issues are framed and parties are directed to adduce evidence. Therefore, in my view the learned Judge had no power or jurisdiction to summon the documents at the stage they had been summoned.

7. For these reasons, this revision is allowed. The order of the trial Court is set aside. No costs.