

(2013) 06 AP CK 0024

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2017 of 2013

M. Dhana Lakshmi @ Vijaya Lakshmi, A.G. Suresh Kumar, APPELLANT
A.G. Ramesh Kumar and A.G. Shyamala

Vs

M. Chinna Ganganna and Nagendra RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 10, Order 16 Rule 10(2), 151

Citation : (2013) 5 ALD 20 : (2013) 5 ALT 448

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : T.S. Anand, for the Appellant; K. Sita Ram, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This civil revision petition is filed against the order dated 19.02.2013 in I.A. No. 13 of 2013 in O.S. No. 55 of 2008 on the file of the learned Senior Civil Judge, Adoni. The petitioners filed the abovementioned suit for declaration of title to the plaint schedule land, for permanent injunction restraining the defendants from interfering with their possession and enjoyment of the plaint schedule land and also for consequential mandatory injunction directing removal of the sheds marked as S1 and S2 in the rough sketch appended to the plaint or in the alternative for declaration of title and for possession of the plaint schedule land together with consequential mandatory injunction for removal of S1 and S2 sheds. The respondents filed written statement, wherein they have also preferred a counter claim by pleading that they have purchased the suit schedule land. The petitioners have cited one Kallubavi Ganganna, S/o Ayyappa as P.W. 4 and filed his affidavit in lieu of chief examination. They have filed I.A. No. 13 of 2013 under Order 16 Rule 10(2) and (3) and Section 151 C.P.C. for issue of warrant of arrest against P.W. 4. In their affidavit filed in support of said application, they have stated that in spite of summons being issued by the Court on four occasions, and personally on one

occasion, the same could not be served on P.W. 4 as he is deliberately evading the summons and that as P.W. 4 is a material witness, whose name appears as attestor in Ex. B1, it is necessary to examine him. Accordingly, the petitioners sought for issuance of arrest warrant against the said witness. This application was resisted by the respondents by filing a counter-affidavit. The Court below has dismissed the said application on the reasoning that as the petitioners have filed the chief examination affidavit of P.W. 4, the Court ought not to have issued summons and that it has committed a serious mistake in issuing summons to P.W. 4. The Court below has arrived at this conclusion based on the judgment of this Court in Chukka Ramaiah vs. Chejuru Bujjaiah.

2. In my opinion, the Court below has not properly appreciated the ratio in Chukka Ramaiah. In that case, the party has secured the presence of a witness on his own without the intervention of the Court at an earlier point of time, but it was unable to ensure his presence at the subsequent stage of trial. In such circumstances, the Court held that there is no question of Court issuing summons to such a witness. In my opinion this judgment has no application to the facts of the present case. Following the amendment to the Civil Procedure Code, 1908, which envisaged filing of an affidavit in lieu of chief examination, the witnesses are permitted to file affidavit evidence in lieu of their examination in chief in Court. If a party could secure such affidavit from a cited witness who at a later point of time made scarce of himself, nothing prevents the party from taking the help of the Court to issue summons to him and also warrant if the provisions of Order XVI Rule 10 C.P.C. are satisfied. The judgment in Chukka Ramayya has turned on its own facts. As noted above in that case, the witness has earlier appeared before the Court but failed to appear at a later stage. The Court has, therefore, opined that in such a situation, the question of the Court issuing fresh summons to such a witness does not arise.

3. Under Order XVI Rule 10 C.P.C., where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, if the Court is convinced it can issue summons after following the procedure envisaged in Sub-Clauses (a) and (b) of Clause (1) and Clauses (2) and (3) of Rule 10 of Order XVI C.P.C. As per the said procedure, the Court may issue proclamation, warrant or warrant without proclamation at its discretion after examining the serving officer or the party or his agent as the case may be who has taken out the summons. In the instant case, the Court below has issued summons on as many as four occasions and permitted the party to serve summons on one occasion. P.W. 4 has been deliberately evading summons and appearance before the Court. Therefore, there is nothing wrong in the party approaching the Court for issuance of warrant subject to compliance with the procedure under Rule 10 of Order XVI C.P.C. The Court below has failed to understand the scope of this provision from proper perspective and misguided itself into believing that it has committed wrong in issuing summons in the first place.

4. For the aforementioned reasons, the Order under revision dated 19.02.2013 in I.A. No. 13 of 2013 in O.S. No. 55 of 2008 on the file of the learned Senior Civil Judge, Adoni, is set aside. The Court below is directed to dispose of I.A. No. 13 of 2013 afresh by following the procedure envisaged under Order XVI Rule 10 C.P.C.

5. The Civil Revision Petition is accordingly allowed. As a sequel to allowing the civil revision petition, interim order dated 03.06.2013 is vacated and C.R.P.M.P. No. 2688 of 2013 filed by the petitioners for interim relief shall stand disposed of as infructuous.