
(2003) 03 AP CK 0118
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4473 of 2001

Rani Bai and Others

APPELLANT

Vs

Thakur Ganesh Sing and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 2, Order 16 Rule 3, Order 16 Rule 6, Order 16 Rule 7

Citation : (2003) 6 ALD 8 : (2003) 1 AnWR 632 : (2003) 2 APLJ 443

Hon'ble Judges : V. Eswariah, J

Bench : Single Bench

Advocate : G. Anandam, for the Appellant; C.A.V.R. Seshagiri Rao, for the Respondent

Final Decision : Allowed

Judgement

V. Eswariah, J.—The petitioners herein are the defendants in the suit O.S. No. 76 of 1992 on the file of the II Additional Senior Civil Judge, Warangal. The suit was filed for partition of the scheduled properties. It is stated that the entire evidence on behalf of the plaintiffs and the defendants was closed and when the matter was posted for arguments the plaintiff-respondents came up with an application in I.A. No. 830 of 2001 under Order 16 Rule 1(a) and 6 C.P.C. to summon one R. Venkateshwar Rao to attend the Court to procure and speak about the entries made in Khasrapahani of the year 1954-55 of Hanamkonda revenue village pertaining to land in Sy. No. 733. It is stated in the said application that the plaintiff made very attempt to procure the khasrapahani of the suit scheduled land from the revenue authorities but he could not locate the relevant records; that after making hectic inquiries he came to know that one R. Venkateshwar Rao, who worked as Patwari and Mali patel of Hanamkonda revenue village during 1967-74 and 1974-84 respectively, is having private copy of the Khasrapahani of Hanamkonda; and that on an apprehension that the said person may not attend the Court on his request, he sought the indulgence of the court to direct the said person to speak about the entries in the khasrapahani

pertaining to the suit schedule land. The I.A. was allowed by an order dt.15.9.2001. Aggrieved by the same, the petitioner-defendants filed the present revision petition.

2. Under Order 16 Rule 1 C.P.C. within 15 days of settlement of issues the parties to the suit shall furnish list of witnesses whom they propose to call either to give evidence or to produce the documents. Admittedly, the person who is sought to be summoned is not one of the witnesses mentioned in the list of witnesses furnished by the plaintiff. Under Rule 1(a) the party to the suit may produce the witnesses to give evidence and to produce the documents without taking any summons under Rule 1. Under Order 16 Rule 2 the party applying for summons shall deposit the traveling expenses of the witness who is sought to be summoned. A reading of Order 16 Rule 1 and 2 makes it clear that the parties has to furnish list of witnesses within 15 days after settlement of issues and it is open for the concerned parties either to produce the said witnesses on their own or can obtain summons from the Court requiring the witnesses to attend the court and give evidence. The expenses of the witnesses either can be deposited in the Court or can be tendered personally at the time of serving the summons under Order 16 Rule 3. Under Order 16 Rule 6 any person may be summoned to produce the documents without being summoned to give evidence and if such person is required by the party to give evidence and also produce the document, he shall attend the Court and produce the document as contemplated under Order 16 Rule 7. Here is a case where the party had filed the I.A. under Order 16 Rule 1(a) and 6 of the C.P.C. Order 16 Rule 6 does not contemplate that a third party can be summoned to attend the Court, give evidence and also produce the document. It only contemplates that a person, who is one of the persons mentioned in the list of witnesses, can be summoned to produce the document without being summoned to give evidence. The person who is now sought to be summoned is not one of the witnesses listed and therefore the question of summoning the ex-patwari that too after evidence is closed and the suit was posted for arguments does not arise. There are no bona fides on the part of the plaintiffs to file such an application at the fag end of the trial and when the matter was posted for arguments. The Court below without proper appreciation of the relevant provisions allowed the I.A. Hence, the order under revision is unsustainable. It is, therefore, set aside. The revision petition is accordingly allowed. No costs.