
(2004) 04 AP CK 0086
In the Andhra Pradesh High Court
Case No : CRP No. 6720 of 2003

Royalwar Gangaram

APPELLANT

Vs

Chandrakanth Tambakuwar and Others

RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10

Citation : (2004) 4 ALD 859 : (2004) 2 APLJ 33

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : J. Aswin Kumar, for the Appellant; Ravi Kiran Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This revision petition is directed against the order dated 22.10.2003 in IA No. 247 of 2003 in OS No. 18 of 1999 on the file of the Court of the Senior Civil Judge, Bodhan, Nizamabad District.

2. The revision petitioner is the second defendant in the suit, whose application filed under Order 13, Rule 10 of the CPC (for short "the Code") for summoning certain documents, was dismissed by the Court below.

3. The main suit was filed by the first respondent herein seeking a declaration that the Registered Sale Deed dated 16.7.1997 relating to the sale of the house bearing No. 2-72 (old), 2-77 (new) situated at Madnoor Gram Panchayat is null and void. As per the plaint averments, the father of the plaintiff by name Uddav was the absolute owner and possessor of the said house. It is stated that his father died on 21.11.1990 and thereafter by virtue of the order of the Gram Panchayat, Madnoor dated 21.4.1992, the said house property along with other properties was transferred in his name and that he has been paying the house tax to the Gram Panchayat regularly. It is stated that the Gram Panchayat, Madnoor had already granted permission for construction of a new structure in the place of the said dilapidated house bearing No. 2-72 (old), 2-77 (new). It is

alleged that the first defendant (2nd respondent herein) who is his mother executed a Registered General Power of Attorney, dated 21.4.1994 in favour of the second defendant only for the purpose of managing her properties. However, the second defendant with a mala fide intention executed the sale deed in question in favour of the third defendant, in pursuance of which the third defendant has been trying to get the property mutated in his name. It is also pleaded that on 28.7.1997 the first defendant (2nd respondent) herein go the General Power of Attorney in favour of the second defendant cancelled.

4. The first defendant filed a written statement admitting the claim of the plaintiff and prayed that the suit may be decreed as prayed for against the Defendants 2 and 3.

5. The Defendants 2 and 3 contested the suit by filing a detailed Written Statement. They denied all the plaint allegations and stated that the third defendant is a bona fide purchaser and that since the date of sale, he has been continuing in possession and enjoyment of the house in question. It is also stated that the entire sale consideration was paid to the first defendant and she acknowledged the same. It is contended that the Sale Deed in question is legal, valid and binding on the first defendant and that the plaintiff has no right to question the same. It is also specifically pleaded and that the plaintiff is neither natural nor adopted son of late Uddav Tambakuwar and that the alleged mutation in his favour is illegal and does not confer any right on him.

6. The Plaintiff got himself examined as P.W.1 and Exs.A-1 to Ex.A-18 documents were marked. While the suit was coming up for evidence of the defendants, the second defendant/revision petitioner filed IA No. 247 of 2003 under Order 13, Rule 10 of the Code for summoning the Original Admission Register and Original Register of Transfer Certificates of the plaintiff from the Kashtwar Dowlathkhan Vidhalaya, Pusad, Yavathmal District, Maharashtra State. In the affidavit filed in support of the application, it is stated that while deposing as PW1, the plaintiff has deliberately improved his case stating that he is the adopted son of late Uddav and the first defendant, though he failed to make such an averment in the plaint. It is further stated that the relationship of the plaintiff with late Uddav and the first defendant as stated by him is not correct and therefore it is necessary to call for the Original Admission Register and Transfer Certificate from the school where the plaintiff studied up to 10th class. He stated that though he made an application, the School Authorities refused to issue the copies of the said documents and therefore it is necessary in the interest of justice to summon the said documents.

7. The plaintiff opposed the said application. In the counter filed, he stated that since the suit is neither for a decree for partition nor for declaration of adoption, there is no need to call for the documents as prayed for in the petition.

8. The Court below by order dated 22.10.2003 dismissed IA No. 242 of 2003 holding that the documents required to be summoned are not necessary to prove

the contentions of the second defendant. Aggrieved by the same, the present revision petition is filed.

9. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents and perused the entire material on record.

10. The learned Counsel for the petitioner contends that the documents required to be summoned are essential for the purpose of deciding the issue in question in the main suit. He contends that since the very identity of the plaintiff is in dispute, the documents sought to be called for are essential to establish the relationship of the plaintiff with late Uddav. He also contends that a stranger has no locus standi to seek a declaration that a Registered Document is null and void and therefore the suit itself is liable to be dismissed as not maintainable, if it is established that the plaintiff is not the son of the late Uddav and the first defendant.

11. On the other hand, the learned Counsel for the respondents while supporting the order under revision contended that the said documents have no bearing to decide the issue in question and therefore the interference of this Court is not warranted.

12. Before going into the merits of the case, it is necessary to note Order 13, Rule 10 of the Code which runs as under :

"Order 13, Rule 10: Court may send for papers from its own records or from other Courts :--(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit."

A reading of the above provision shows that the Court is empowered, either on its own or on application of any of the parties to the suit, to call for record of any other suit or proceeding from its own record or from any other Court and inspect the same. However it is not a matter of course but it is necessary for the party who seeks to call for the record to explain how such original record is material to the suit and further to show that the duly authenticated copy of such record cannot be obtained without any unreasonable delay or expense. When such application is made by either party, undoubtedly the Court has discretion to grant

or refuse such application. It is for the Court to arrive at a conclusion whether the record required by the applicant is material to the suit. It is also relevant to note that on the face of it Rule 10 of Order 13 deals with summoning the record/ documents only from the Court, be it the same Court or any other Court.

13. In the case on hand, the 2nd defendant (Revision Petitioner) filed the application to summon the original record from a school where the plaintiff said to have been studied. Having regard to the clear and unambiguous language employed in Order 13, Rule 10 of C.P.C., I am of the view that such an application to summon the record from an educational institution which is neither a Court nor even a Quasi-judicial Authority is not maintainable under Order 13, Rule 10 of C.P.C. May be the proper course would be by summoning the concerned person as a witness for production of the record in question, but undoubtedly the power under Rule 10 of Order 13 C.P.C. cannot be invoked for the said purpose. On that ground alone, the application is liable to be dismissed.

14. However the learned Counsel for the petitioner contends that even in the absence, of express provision, having regard to the facts and circumstances of the case, the Court below in exercise of its inherent jurisdiction u/s 151 of the CPC is competent to summon the documents in question. He contends that the conclusion of the Court below that the documents in question are not necessary to prove the contentions of the 2nd defendant is erroneous.

15. It is relevant to note that the specific plea raised by the Plaintiff is that the sale deed was executed by the second defendant by playing fraud taking advantage of the General Power of Attorney executed in his favour by the first defendant. It is also the specific case of the Plaintiff that he is in possession of the property covered by the sale deed. He is asserting title and possession of the said property as on the date of execution of the sale deed by the 2nd defendant. Thus, when the plaintiff claims title, interest and possession in respect of the property covered by the sale deed sought to be declared as void undoubtedly he has a cause of action to maintain a suit for cancellation of such sale deed since such instrument if left unchallenged would cause serious prejudice to his rights. Hence, I am unable to agree with the contention of the learned Counsel for the petitioner that once it is established that the plaintiff is not the son of late Uddav, the suit is liable to be dismissed as not maintainable. Thus even on merits I do not find any infirmity in the order under Revision and there is no justifiable reason to interfere with the discretion exercised by the Court below in having declined to summon the documents in question.

16. Accordingly, this civil revision petition is dismissed. No costs.