
(2011) 04 AP CK 0023

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5615 of 2010

Shaik Hussain Peera (died) L.Rs. and Others

APPELLANT

Vs

J. Suseelamma and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 2, 151
Evidence Act, 1872 — Section 45

Citation : (2011) 5 ALD 39

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Roopesh Kumar Reddy, for the Appellant; None, for the Respondent

Judgement

L. Narasimha Reddy, J.—The Respondents filed O.S. No. 434 of 2004 against the Deceased-1st Petitioner in the Court of Additional Senior Civil Judge, Kurnool for declaration of title and perpetual injunction in respect of the suit schedule property. It was pleaded that the property was originally owned by late, J. Subrahmanyam, the husband of the 1st Respondent herein, and that the deceased-1st Petitioner was interfering with the possession of the property.

2. During the pendency of the suit, the sole Plaintiff (the 1st Petitioner) died and his legal representatives, the Petitioners 2 to 7 herein came on record. Apart from opposing the suit, they filed a counter-claim for specific performance of an agreement of sale, dated 29-07-1999, said to have been executed by late, Subrahmanyam. The Respondents disputed the genuinity of the signature on the agreement of sale. To overcome that, the Petitioners filed I.A. No. 49 of 2010, under Rules 1 and 2 of Order 16, read with Section 151 CPC with a prayer to summon the Manager of Kurnool District Cooperative Credit Bank, Dhone Branch, for production of "loan account No. 61/CMD". According to the Petitioners, late Subrahmanyam raised loan from the Cooperative Credit Bank and that the document therein would certainly contain his signature. Their effort was to

procure such document, so that an application can be filed u/s 45 of the Indian Evidence Act. The application was opposed by the Respondents. The trial Court dismissed the I.A., through order dated 15-0-6-2010. Hence, this revision.

3. Heard Sri Roopesh Kumar Reddy, learned Counsel for the Petitioners.

4. A party to a suit is conferred with a right to summon the documents, which are not in his possession, by filing an application under the relevant Rule of Order 16 Code of Civil Procedure. Two conditions are required to be satisfied for this purpose: The first is that the documents, which are proposed to be summoned, must be shown to be relevant, to the dispute in the suit. The second is that the document must be mentioned and described specifically. The Petitioners filed I.A. No. 49 of 2010 with a request to summon the Branch Manager and to require him to produce the "loan account".

5. When the object of the Petitioners is to get a document that contains the undisputed signature of late Subrahmanyam, they were required to be certain about the identity of the same, and to be specific about the description. Summoning of a file, or "loan account" would in no way serve the purpose. The Petitioners are not specific about any particular document in the file. Before requesting the trial Court to summon the document, they ought to have been sure about the nature of the document. In fact, they could have obtained certified copy of the same, if there exists one. Unless the Petitioners are certain about the description of the document, there does not exist an occasion to examine its relevance. The trial Court has taken the view that the application filed by the Petitioners is vague and bereft of specific information. This Court is not inclined to interfere with the orders passed by the trial Court.

6. As and when the Petitioners become clear about the nature of the document, and its description, they can certainly renew their request.

7. Hence, the C.R.P. is disposed of, upholding the order under revision, but leaving it open to the Petitioners to file an application in case, they are able to identify any specific document, that contains the undisputed signature of late Subrahmanyam.

There shall be no order as to costs.