

APHC010284762025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3209]

FRIDAY, THE THIRTIETH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

CIVIL REVISION PETITION No: 1357 of 2025

Between:

1.T. LAKSHMAIAH, S/o.(LATE) T.RAMAIAH, R/O D.NO. 27-1001/2,
RAMNAGAR COLONY, CHITTOOR.

...PETITIONER

AND

1.T RAMAIAH, S/O (LATE) TRAMAIAH RESIDING AT ATHP,0498,
CHERUVUMUNDARA KANDRIGA,69 MADHAVARAM POST,
YADAMARI MANDAL, CHITTOOR DISTRICT.

2.T HARI, S/O (LATE) CHENGAI AH, R/O KUNCHAMPALLE, NO.70,
JANGALAPALLE YADAMARI MANDAL, CHITTOOR DISTRICT.

3.T DORASWAMY, S/O (LATE) TRAMAIAH, R/O D.NO.28-1165/2
GANGANAPALLE, CHITTOOR DISTRICT.

4.T R SUBRAMANYAM, S/O (LATE) TRAMAIAH, R/O D.NO.27-89,
RAJA REDDY STREET, RAMNAGAR COLONY, CHITTOOR
DISTRICT.

5.T BALAKRISHNA, S/O (LATE) TRAMAIAH, JAILKHANA STREET,
MITTOOR.CHITTOOR DISTRICT.

...RESPONDENT(S):

Counsel for the Petitioner:

1.Mr.VIVEKANANDA VIRUPAKSHA

Counsel for the Respondent(S):

1.Mr.M SIVA KUMAR

The Court made the following Order:

The Revision Petition is filed aggrieved by the orders dated 25.04.2025 in I.A.No.28 of 2025 in O.S.No.8 of 2017 on the file of the Court of First Additional District Judge, Chittoor.

2. The petitioner herein is the Defendant No.1 in the said suit. The 1st respondent / plaintiff filed the suit for declaration of title in respect of the plaint schedule property and to grant permanent injunction restraining the defendants, their men, agents etc., from in any way interfering with the plaintiff's peaceful possession of the suit schedule properties.

3. The petitioner / 1st defendant filed a written statement and contesting the matter. He filed the above said I.A., under Order XVI Rule 7 of Code of Civil Procedure (for short 'C.P.C.') to issue summons to the Chief Executive Officer, Primary Agricultural Co-Operative Society Limited, Yadamari Mandal, Chittoor District to cause production of original Registered Simple Mortgage Deed dated 26.04.2004 and other loan records and documents, the details of which are mentioned in the petition and to give evidence. The 1st respondent / plaintiff filed counter and resisted the application, which came to be dismissed by the impugned order.

4. The learned counsel for the petitioner while referring to the plaint averments and the defence taken by the petitioner / 1st defendant, more particularly in Para No.7 of the written statement, advanced arguments and contends that the learned Trial Court went wrong in dismissing the application

in question without considering the matter in a proper perspective. He submits that the learned Trial Court failed to exercise the jurisdiction vested in it and went wrong in dismissing the I.A., on unsustainable grounds, without considering that the documents sought to be summoned are essential for a just and proper adjudication of the issue involved in the suit. He also contends that the learned Trial Court ought to have appreciated that whether the petitioner is a party to the document or not, is not a material aspect to consider the prayer for summoning of the document and further that filing of a criminal complaint in respect of the documents sought to be summoned is not a bar or come in the way of the petitioner to invoke the other remedies available in Law. Making the said submissions and relying on the decisions in **Nankani Kishan v. M.Shankar Narayana**¹, **N.Balaraju v. G.Vidyadhar**², **Addagatla Narendar v. Some Vijayalakshmi**³ and **Paruchuri Adi Lakshmi v. Paruchuri Nagendramma and Ors.**,⁴ etc., the learned counsel seeks to allow the Revision Petition by setting aside the order under challenge.

5. On the other hand, the learned counsel for the 1st respondent / plaintiff sought to sustain the impugned order contending that the same is well considered and that there is no illegality or perversity warranting interference under Article 227 of the Constitution of India. He submits that in the affidavit filed in support of the I.A., no specific details of the documents sought to be summoned were mentioned and in fact, no application as required under

¹ 2002 (2) ALD 63

² AIR 2004 AP 516

³ 2006 (3) ALD 94

⁴ 2016 (6) ALD 581

Order XVI Rule 1 of C.P.C., was filed and the application in question under Order XVI Rule 7 of C.P.C., is not maintainable. He further submits that even the application in question was filed belatedly at the time of evidence of the 1st defendant / D.W.1 and the same is lacking in bonafities, apart from merits. While contending that the I.A., was filed only with a view to protract the litigation and that the documents sought to be summoned are of no aid to the case of the petitioner / 1st defendant, the learned counsel urges for dismissal of the revision petition. He also placed reliance on the decision of a learned Judge in **Shaik Abdul Rasool v. G.Lakshmi Reddy and Another**⁵.

6. This Court has considered the submissions made and perused the material on record.

7. On an appreciation of the rival contentions, the point that arises for adjudication is : Whether the order under challenge is not sustainable and calls for interference by this Court, in the facts and circumstances of the case?

8. Before answering the point for consideration, it is pertinent to note that in the written statement, specific pleas with regard to the loan transactions and creation of charge by way of mortgage in respect of the plaint schedule properties to the Periambadi Primary Agricultural Co-operative Society (PACS) were taken and to establish the case of the petitioner / 1st defendant, the petition in question was filed seeking to issue summons to the C.E.O., of the said Society to cause production of the Original Registered Simple Mortgage Deed dated 26.06.2004 and other records / documents. In the affidavit filed in

⁵ 2012 (1) Current Cases 130

support of the said application, it is also mentioned that a complaint was lodged against the 1st respondent / plaintiff for the offences of cheating, forgery etc., that a crime was registered and the same is pending. Therefore, the same would not disentitle the petitioner / 1st defendant to invoke the remedies under Civil Law, more particularly to substantiate the defense / case, set out in the written statement. Be that as it may.

9. It is the submission of the learned counsel for the 1st respondent / plaintiff that the application was filed without giving specific details of the documents sought to be produced by summoning the C.E.O., and that the application under Order XVI Rule 7 of C.P.C., is not maintainable. The said submissions merits, no acceptance. In the petition, the specific details of the documents sought to be produced were furnished and reasons for summoning the C.E.O., and production of documents were stated in the affidavit filed in support of the I.A. At this juncture, it is relevant to refer to Order XVI of C.P.C., which deals with Summoning and Attendance of Witnesses.

Order XVI Rule 1 contemplates filing of list of witnesses and summons to witnesses and for ready reference, the same is extracted hereunder:

“1.List of witnesses and summons to witnesses: (1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

2. A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

3. The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

4. Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the [Court in this behalf within five days of presenting the list of witnesses under sub-rule(1)].

[1A.**Production of witnesses without summons.** – Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.]”

Order XVI Rule (2) deals with Expenses of witness to be paid into Court on applying for summons.

Order XVI Rule (3) provides for Tender of expenses to witness.

Order XVI Rule (4) deals with Procedure where insufficient sum paid in and Rule XVI Rule (5) requires the Time, place and purpose of attendance to be specified in summons.

Order XVI Rule (6) deals with summons to produce documents and Rule (7) deals with the Power to require persons present in Court to give evidence or produce document.

10. In the light of the above said provisions, the application though filed under Order XVI Rule 7 is not appropriate, the same cannot be a ground to accept the submission made by the learned counsel for the 1st respondent / plaintiff. It is settled Law that mere mention of wrong provision of Law cannot be a ground to reject the application, if the Court is otherwise empowered to grant the relief sought for.

11. In **Shaik Abdul Rasool v. G.Lakshmi Reddy and Another**⁶, on which the learned counsel for the respondent / plaintiff placed reliance, the learned Judge was dealing with the order passed by the Trial Court on an application

⁶ 2012 1 CurCC 130

filed under Order XVI Rules 6, 7 and 14 of C.P.C. The I.A., was filed seeking to summon the Chief Executive Officer as a witness to produce the records and documents and the same was dismissed with an observation that Rule 14 of Order XVI of C.P.C., does not confer right upon a party to require the Court to summon or examine a person as a Court witness. While dismissing the Revision Petition, the learned Judge at Para No.23 opined that the Power under Rule 14 of Order XVI of C.P.C., is to be exercised by Court, on its own accord and not on the insistence by a party to the suit. Though a party to the suit can place any information, which may impress upon or convince the Court to exercise its powers under that provision, an independent application for that very purpose does not lie. If parties are permitted to make independent application for summoning of an individual as a Court witness and are conferred with the right to insist the Court to accede their request, it may lead to several complications. It can be used as a device to overcome their inability or failure to summon a witness, and in certain cases to fill up the lacuna in the evidence, which is already on record.

12. The above said case is not applicable to the present fact situation and the petitioner is not seeking to summon the C.E.O., and give evidence as a Court witness.

13. Referring to a catena of cases, in **Addagatla Narendar v. Some Vijayalakshmi**⁷, a learned Judge of the erstwhile High Court of Andhra

⁷ 2006(3) ALT 422

Pradesh, while setting aside the order of the Trial Court rejecting the application filed for summoning the witnesses, observed as follows:

“5. In *Sri Aurobindo Ashram Trust and Anr. v. Kamal Dora* MANU/TN/0191/2000: AIR 2000 Mad 494, it was held that a party who seeks for a prayer to the Court to issue summons to the witnesses must reveal to the Court, the purpose for which the witness is proposed to be summoned and once such an application is filed, it is for the Court to use its discretion and to decide whether summons are to be issued to these witnesses and it is to be noted that the issue of summons is not automatic and in appropriate cases or in cases where objections are raised, the bona fides of the request may have to be looked into and appropriate orders to be passed.”

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8. Unless statutory infraction is imperative, procedural technicalities not to defeat the substantial justice. Permitting let in of all admissible evidence is the general rule, rejecting thereof under specified circumstances to be an exception always. Liberal approach to lean in favour of doing substantial justice despite the procedural technicalities, may be highly essential in several of the cases lest the very justice delivery system will suffer in its working to the detriment of the litigant public.

14. In C.R.P.No.1484 of 2019, a learned Judge of this Court dealt with an order passed by the Trial Court in an application filed under Order XVI Rules 1 & 2 and Section 151 of the C.P.C., to summon the witnesses to produce the documents and give evidence in support of the same. The Trial Court rejected the said application and while setting aside the said order and allowing the Revision Petition, the learned Judge held as follows:

“9. The effort of a Court in permitting the evidence to be received must be in such a way that it can adjudicate the case on merits having assistance of best possible evidence and to completely decide the issue involved.

Unless there is a deliberate attempt to delay or dodge the case, rigid approach need not be adopted to curtail parties from placing evidence. As rightly contended, though there is need to file list of witnesses, when the party seeks to summon witnesses, it cannot be taken as a ground to prevent party from leading evidence.”

15. In C.R.P.No.2973 of 2023, a learned Judge of this Court was examining the validity of the orders passed by the Trial Court in an application filed by the plaintiff under Order XVI Rule 1, 5 and 6 r/w Section 151 of C.P.C., requesting the Court to issue summons to the Chief Executive Officer, Primary Agricultural Cooperative Credit Society(PACCS), to produce the loan ledger book and the registered mortgage bonds executed by the father of the plaintiff and the defendant No.1, the grandfather of the defendant No.6 in favour of PACS and to give evidence. After referring to Order XVI Rule 1 C.P.C., the learned Judge while appreciating the order passed by the Trial Court, dismissed the Revision Petition *inter alia* observing that there may be delay in filing the application, but on mere ground of delay the application under Order XVI Rule 1(3) C.P.C., cannot be rejected, as rules of procedure are handmade of justice. In Para No.14, the learned Judge observed as follows:

14.Under Order XVI Rule 1 (3) C.P.C., the power of the Trial Court to direct production of witness, whose name does not appear in the list referred to in sub rule (1) is to do complete justice. If the Court finds that it would be helpful to decide the lis between the parties and the truth will come out, the Trial Court would be within its power and jurisdiction to allow such application and summon any witness.

16. In the case on hand, as seen from the impugned order, the learned Trial Court has not examined the matter in the right perspective, more particularly in the light of the above stated legal position. It appears to have been carried away by the aspect that a private complaint was lodged in respect of the

documents sought to be summoned and the same would disentitle the petitioner from filing the application in question and that the debt covered under the mortgage is pending and further that the documents sought to be summoned should relate to the petitioner / defendant No.1. Such conclusions cannot be treated in the exercise of discretion by the learned Trial Court in the correct perspective, as the same would lead to miscarriage of justice. Therefore, the contentions advanced by the learned counsel for the respondents are rejected.

17. In the result, the Revision Petition is allowed. The impugned order is set aside and the I.A., in question is allowed, however, as the same was filed after examination of D.W.1, by imposing costs of Rs.5,000/- payable to the 1st respondent / plaintiff, within three (3) weeks from the date of receipt of a copy of this order.

Consequently, all pending applications, if any, shall stand closed.

JUSTICE NINALA JAYASURYA

BLV

Dt. 01.2026

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

C.R.P. No: 1357 of 2025

Date: 01.2026

BLV