

## Yale Malleshappa and Others Vs Chinna Hotur Bale Eramma

**Court:** Andhra Pradesh High Court

**Date of Decision:** Sept. 8, 2004

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 16 Rule 1, Order 39 Rule 1, Order 39 Rule 2, 141, 151

**Citation:** (2004) 6 ALD 285 : (2004) 6 ALT 565

**Hon'ble Judges:** D.S.R. Varma, J

**Bench:** Single Bench

**Advocate:** B. Ramakrishna and P. Deepa Naidu, for the Appellant; R.V. Subba Rao, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

D.S.R. Varma, J.

Head both sides.

2. This civil revision petition is directed against the order and decree, dated 12-7-2004, passed by the Principal Junior Civil Judge at Adoni,

Kurnool District, allowing the application in I.A. No. 673 of 2004 in O.S. No. 282 of 2004, filed under Rule 129 of the Civil Rules of Practice

and Order 16, Rules 1 and 2 and Section 151 of the CPC to summon the Mandal Revenue Officer by directing him to produce the original

Adangal for the Faslis 1404 to 1413 pertaining to the suit schedule land bearing S.No. 447 of Madire Village.

3. The petitioners are the defendants and the respondent is the plaintiff.

4. For the sake of convenience, the parties will be referred to as arrayed in the suit.

5. The short question that falls for consideration in this Civil Revision Petition is - as to whether a party to the suit can make an application under

Order 16, Rule 1 read with Section 151 of the CPC seeking to summon a person directing him to produce some records pertaining to the suit

schedule property, without there being any issues framed by the Court?

6. The undisputed facts are that the plaintiff filed the suit for declaration of title and permanent injunction. The plaintiff also filed an application in

I.A. No. 602 of 2004 under Order 39, Rules 1 and 2 of the CPC along with the suit. The defendants have also filed written statement. At that

stage i.e., during the enquiry into the said application, filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, the plaintiff seems to

have filed the present application under Order 16, Rule 1 read with Section 151 of the Code of Civil Procedure, on the ground that the Adangals,

which were filed by the defendants along with the written statement, were obtained fraudulently. It is also not in dispute that the plaintiff also filed

certain set of Adangals in support of her case.

7. The Court below, after considering the factual and legal position, allowed the said application. Aggrieved by the said impugned order and

decree, the present Civil Revision Petition has been filed.

8. Sri K. Gangaiah Naidu, the learned Senior Counsel appearing on behalf of the defendants, vehemently contends that Order 16, Rule 1 read with

Section 151 of the CPC is not available to the plaintiff at the interlocutory stage, particularly while dealing with an application filed under Order 39,

Rules 1 and 2 of the Code of Civil Procedure. It is his further contention that while dealing with an interlocutory application, the jurisdiction of the

Court is limited to the extent of going through the facts and circumstances and arrive at a conclusion as to whether the application filed under Order

39, Rules 1 and 2 of the CPC can be ordered. It is also his further contention that a reading of Order 16, Rule 1 of the CPC Code would only

suggest that the Court can exercise its jurisdiction under the said provision only after framing the issues.

9. For ready reference and convenience, the provisions of Rule 1 of Order 16 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.

10. A plain reading of the said provisions of Rule 1 of Order 16 of the CPC Code makes it abundantly clear that within not later than 15 days after

the date on which the issues are settled, either party can be called upon to give evidence or produce documents and obtain summons to any person

for his attendance in the Court.

11. In support of his contentions, the learned Senior Counsel relies on a judgment rendered by a learned Single Judge of this Court in Bathina

Koteswara Rao Vs. Gollapudi Masthan Rao and others, . He further contends that under Order 14, Rule 4 of the Code of Civil Procedure, the

Court may examine the witnesses or documents before framing the issues, but, however, a perusal of the said provision would only disclose that if

the Court is of the opinion that the issues cannot be framed without examination of some person or when the inspection of any document not

produced along with the suit is necessary, may, in its discretion, compel the attendance of any such person or the production of any such

documents. It is his further contention that the said stage did not arise so far in the present suit. He further vehemently contends that at the threshold

merely because an affidavit along with an application is filed stating that the documents filed by the other party are fraudulently obtained and filed,

the Court cannot automatically invoke its jurisdiction under Order 16, Rule 1 of the Code of Civil Procedure.

12. On the contrary, the learned Counsel appearing for the plaintiff contends that the Court has jurisdiction under Order 16, Rule 1 of the CPC to

order the application of the present nature. It is his further contention that this Court has jurisdiction u/s 151 of the CPC as the Code postulates in

Section 141 that the procedure provided in the Code regarding the suit shall be followed as far as possible in all proceedings while adjudicating the

suit.

13. In the background of these rival contentions, it is relevant to look into Section 141 of the Code of Civil Procedure, which is as under:

141. Miscellaneous Proceedings :--The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in

all proceedings in any Court of civil jurisdiction.

Explanation :--In this section, the expression ""proceedings"" includes proceedings under Order IX, but does not include any proceeding under

Article 226 of the Constitution.

14. In Bathina Koteswara Rao v. Gollapudi Masthan Rao (supra), the learned Single Judge of this Court, while dealing with Order 16, Rules 6 and

7 and also while dealing with Order 14, Rule 4 of the Code of Civil Procedure, held as under:

Order XIV, Rule 4 CPC: Court may examine witnesses or documents before framing issues:- Where the Court is of opinion that the issues cannot

be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the

suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any

person or the production of any document by the person in whose possession or power it is by summons or other process.

A plain reading of the Rule would only suggest that, that stage would come only after the written statement is filed and if on the basis of the

pleadings the Court was of the opinion that issues could not be correctly framed he could summon a document. This stage has not at all reached in

the present suit and there was no satisfaction of the learned Trial Court that issues could not be framed without summoning the documents in

question. Obviously, no such satisfaction could be recorded because no written statement was filed.

15. The learned Judge also held at Para 6 of the judgment:

This Rule hardly helps the case of the respondents. Order 16 in itself is an order which deals with summoning and attendance of witnesses and this

stage in a proceedings in a suit comes only after the issues are framed and parties are directed to adduce evidence. Therefore, in my view, the

learned Judge had no power or jurisdiction to summon the documents at the stage they had been summoned.

16. From the above position, it appears that the learned Judge took a categorical view that unless and until the stages prescribed specifically under

Order 14, Rule 4 and Order 16 the Court cannot exercise its jurisdiction and compel the attendance of a witness or production of any document.

17. A careful perusal of the said decision of the learned Judge, on facts, it appears that an application was made by the defendants without filing

the written statement seeking production of certain documents from the Revenue Authorities concerned.

18. In the instant case, it is not in dispute that the defendants had already filed the written statement along with a set of documents including some

Adangals. During the course of hearing of the said application in I.A. No. 602 of 2004, filed by the plaintiff under Order 39, Rules 1 and 2 of the

Code of Civil Procedure, the plaintiff filed the present application seeking the concerned Mandal Revenue Officer to be present and produce the

original Adangal for the relevant years pertaining to the suit schedule property.

19. From the impugned order, it could be seen that the present application in I.A. No. 673 of 2004 came to be filed only when the Court below

was dealing with the application in I.A. No. 602 of 2004 filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure. In other words,

while adjudicating the said application, the Court below was confronted with two sets of Adangals filed by both the parties, which were annexed

along with the plaint and the written statement respectively.

20. While dealing with an application filed under Order 39, Rules 1 and 2 seeking temporary injunction, the Court should normally look into the

prima facie case, balance of convenience and irreparable injury that may likely to be caused to the plaintiff if temporary injunction is not granted.

21. From the facts narrated above, it appears that both the parties have been relying on two sets of documents i.e., Adangals said to have been

issued by the very same Village Administrative Officer. Obviously, both the documents cannot be true, and only one set can be true or prima facie

appears to be true.

22. In other words, even if any incidental finding is recorded by the Court below relying on the documents filed by a party, while dealing with an

application filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure, so as to find out" whether prima facie case has been made out and

whether balance of convenience lies in favour of such a party, such findings cannot, and will not, attain the finality as they are not conclusive and

also the veracity or otherwise of the oral evidence that may be given by any person so summoned, or whose presence is compelled by the Court

below, have got to be verified and appreciated on merits in the light of the other evidence that may be adduced during trial or already placed on

record.

23. Here is the case where, as already noticed, the Court is confronted with two sets of documents said to have been issued by the very same

Village Administrative Officer and both the parties are relying on their respective set of documents in order to establish that prima facie case and

balance of convenience lie in their favour.

24. Therefore, the question before the Court below was only with regard to prima facie case, balance of convenience and irreparable injury only,

in order to arrive at a just and reasonable conclusion, whether to grant temporary injunction or not.

25. No doubt, the provisions of Order 16, Rule 1 or Order 14, Rule 4 of the CPC may not really be applicable as contended by the learned

Senior Counsel, appearing on behalf of the defendants. The stages prescribed in those two provisions did not, in deed, reach yet. Quite obviously

those two provisions are available to the Court below and also the parties only at the relevant point of time as postulated therein.

26. But, in the present case, the facts are altogether different. It is only while dealing with an application filed under Order 39, Rules 1 and 2 of the

Code of Civil Procedure, the Court was rather in dilemma regarding the veracity of two sets of documents filed by each side. In such a case, in

fact, no express provision is available under the Code to the Trial Court.

27. In this connection, it is to be noted that, Section 141 of the CPC makes it clear that the procedure that is to be adopted in a regular suit, as far

as possible, be followed while dealing with interlocutory matters also subject to certain exceptions.

28. In a way, the present situation, where the Trial Court is landed, it has not been met with by the CPC by enacting any specific provision in that

behalf. In the absence of any such specific provision, while dealing with a particular situation, which is rather a fact situation, the powers of the

Court that are exercisable u/s 151 of the CPC cannot be held to be taken away. Therefore, the inquiry that is being conducted by the Court below

while dealing with an application filed under Order 39, Rules 1 and 2 of the CPC shall have to be understood as an inquiry akin to that of an

inquiry in the regular, suit also. The power of the Court cannot be understood to have been stifled or divested simply because there is no specific

provision enacted by the Legislature covering the present piquant situation faced by Trial Court.

29. Obviously, as already pointed out, there are two sets of Adangals before the Trial Court. In such an event, more particularly when the plaintiff

made an application stating that the set of documents filed by the defendants were obtained fraudulently, it is imperative for the Court below to

examine as to which set of the documents have to be relied on, for the limited purpose of recording a finding regarding prima facie case, balance of

convenience or irreparable loss if the temporary injunction is not granted.

30. It is to be further seen that if the submissions of the learned Senior Counsel have to be accepted, the Court below may necessarily have to rely

on the set of documents filed by the defendants and eventually may have to reject the application filed by the plaintiff, under Order 39, Rules 1 and

2 of the Code of Civil Procedure, or it may happen otherwise.

31. It is not safe and proper for the Court below to reject the application filed by the plaintiff in the present peculiar facts and circumstances of the

case, which would only amount to arrive at a conclusion in haste?

32. It is settled proposition of law that, at times, technicalities have no place in the adjudicatory process. As already pointed out, there is no

provision covering the present controversial and factual situation. In such an event, it is for the Court below to invoke its inherent jurisdiction

conferred under Section-151 of the CPC in order to meet the ends of justice or to prevent the abuse of process of law.

33. In the instant case, since there are obviously two sets of documents, said to have been issued by the very same Village Administrative Officer,

in my considered view, it is always open to the Court below to decide, at the threshold itself. As to which set of documents are prima facie true.

34. At the cost of repetition, such prima facie conclusion is not the conclusive and final and is always subject to the final conclusion that would be

arrived at after full-fledged trial of the suit, upon appreciation of the entire evidence available on record.

35. Though the judgment relied on by the learned Senior Counsel in Bathina Koteswara Rao v. Gollapudi Masthan Rao (supra) of this Court is

unexceptionable, the facts in the said case are totally different from the facts in the present case. Therefore, the aforesaid decision is not applicable

to the present peculiar facts and circumstances of the case on hand.

36. In other words, as contended by the learned Senior Counsel, even though the provisions of Order 16, Rule 1 or Order 14 Rule 4 of the CPC

are not applicable or the stages mentioned therein have not reached as yet, still, having regard to the facts and circumstances of the present case

particularly when the Court below was in an indecisive state very same documents i.e., Adangals, issued by the very same Village Administrative

Officer in respect of the property, which are quite contrary to each other, the Court below can always exercise the discretionary jurisdiction

invoking Section 151 of the Code of Civil Procedure, in the interest of justice.

37. Accordingly, I do not find any merits in the civil revision petition and the same is liable to be dismissed.

38. In the result, the civil revision petition is dismissed, at the stage of admission. However, there shall be no order as to costs.