
(2004) 01 AP CK 0048
In the Andhra Pradesh High Court
Case No : CRP No. 5837 of 2003

Abdul Khader @ Abdul Rauf and Others	APPELLANT
Vs	
Aktharunnisa Begum (died) by LR.s. and Others	RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14(3)

Citation : AIR 2004 AP 214 : (2004) 2 ALD 546 : (2004) 2 APLJ 80

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Damodar Rao, for the Appellant; Vinod Kumar Despande, for T.V. Ramana Rao, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri Damodar Rao, the learned Counsel representing the revision petitioners and Sri T.V. Ramana Rao, representing Sri V.K. Deshpande, Counsel representing the respondents.

2. The simple question raised in the present civil revision petition is whether the learned Junior Civil Judge, Utnoor can straightaway receive the documents filed along with a simple memo without observing the procedure contemplated by the provisions of the Code of Civil Procedure, hereinafter in short referred to as "Code".

3. The revision petitioners herein as petitioners/defendants 1 to 5 moved LA. No. 20/2003 in O.S. No. 1/91 on the file of Junior Civil Judge, Utnoor u/s 151 of the Code not to receive documents specified as 1 to 4 in evidence. Several allegations relating to the nature of the documents and also the ground that these are fabricated documents had been averred and this question may not be very relevant for the present purpose.

4. Respondents filed a counter denying the allegations and specific stand was taken that such objection cannot be raised by the petitioners in receiving the documents since the same would be contrary to the orders made by the

Appellate Court at the time of remanding the suit for seeking amendment of the plaint and to give opportunity to both parties for filing documents after amendment of the plaint

5. The learned Judge had recorded reasons in detail at Para-5 and had traced the historical background of the litigation and several of the litigations arising out of different proceedings which are being fought continuously. Sri Damodar Rao, the learned Counsel representing the revision petitioners had submitted that the procedure under Order 13 Rule 1 and Order 7 Rule 14(3) of the Code may have to be followed in case of reception of documents and this procedure of straightaway receiving the documents with a memo by Courts may have to be deprecated since it would amount to totally disregarding the procedure contemplated by different provisions of the Code. The learned Counsel also had pointed out that the learned Judge had totally erred in dismissing the application mainly on the ground that the object of the petitioners is to procrastinate the litigation.

6. Per contra, Sri T.V. Ramana Rao, the learned Counsel representing the respondents had submitted that in the light of remand order made there cannot be any further delay and in fact no prejudice would be caused to other side also since just documents had been received but the validity, admissibility or otherwise may have to be decided either at the time of marking of these documents or at the time of appreciating the documentary evidence along with oral evidence while deciding the matter. The Counsel also would maintain that technicalities of procedure should not come in the way of doing substantial justice between the parties and hence especially in view of the order of remand made in the litigation, the impugned order need not be disturbed in any way.

7. Heard both the Counsel.

8. The revision petitioners are the defendants in O.S. No. 1/91 on the file of Junior Civil Judge, Utnoor. The respondents herein filed the suit for declaration of title and recovery of possession and it appears that originally a suit for permanent injunction simpliciter was instituted and subsequent thereto the prayer was amended praying for declaration of title and recovery of possession. Since certain documents at a belated stage were filed and received, an application I.A. No. 20/2003 in O.S. No. 1/91 on the file of Junior Civil Judge, Utnoor was moved not to receive the said documents and the said application was dismissed. Aggrieved by the same, the present civil revision petition is preferred.

9. Several of the aspects which had been discussed by the learned Judge tracing the historical background of the litigation may not be much relevant for the purpose of disposing of the present civil revision petition. Order 7 Rule 14(3) of the Code, as substituted by Act 22 of 2002, reads as hereunder:

"A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but

is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit."

Under Section 16 of the CPC Amendment Act, 2002, Act 22 of 2002, nothing had been specified about this provision and hence irrespective of the date of institution of the suit it should be taken that to all the proceedings the said provision is applicable. The main ground of attack of the Counsel for the respondents is that inasmuch as the documents had been received by virtue of a remand order made by the Appellate Court, the reception of documents even with a memo can be definitely justified. In the light of the specific provision referred to supra, I am not inclined to accept with the said contention. It is no doubt true that the learned Judge may exercise discretion of receiving the documents especially in, the light of the remand order, provided the documents are produced before the Court in accordance with the procedure specified under the provisions of the Code and not otherwise. It is made clear that reception of documents in an Original Suit at a belated stage just by way of a memo definitely should be deprecated. Even for obtaining leave, reasons are to be explained. Hence, in this view of the matter, in my considered opinion, the impugned order cannot be sustained.

10. However, the matter does not stop there. In the light of the fact that these documents are being produced before the Court in the light of an order of remand where it was specified that opportunity should be given, I am of the considered opinion that though the impugned order as such cannot be sustained, respondents should be given liberty to move an appropriate application along with the documents under the relevant provisions of the Code and the learned Judge, in case the respondents choose to do so, shall entertain such application and dispose of the same in accordance with law.

11. The impugned order is accordingly set aside and the civil revision petition is disposed of with the above direction. No costs.