

(1961) 01 AP CK 0008
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1346 of 1960

Achyutana Pitchaiah Sarma	Vs	APPELLANT
Gorantla Chinna Veerayya and Others		RESPONDENT

Date of Decision : 06-01-1961

Acts Referred:

Evidence Act, 1872 — Section 135

Citation : AIR 1961 AP 420

Hon'ble Judges : Chandrasekhara Sastry, J

Bench : Single Bench

Advocate : B.V. Subramanyam and P. Satyanarayana, for the Appellant; M. Jagannadha Rao, for the Respondent

Final Decision : Allowed

Judgement

Chandrasekhara Sastry, J.—In this C. R. P. a question of general importance as to the power of Court to exclude from the Court parties and their witnesses during the trial arises for decision. The suit was filed in the year 1951 and after a chequered career, was taken up again by the lower court. The fourth defendant in the suit is the petitioner in this C. R. P. It is stated that the examination and Gross-examination of the plaintiff's witnesses was over and that the fourth defendant was present when they were examined.

Then, one Nalluuri Yacob was put in the witness-box as the first witness for the defendants. At that time also, the fourth defendant was sitting in Court. The witness stated "I know the suit lands". Then the counsel for the plaintiff objected to the fourth defendant sitting in the court, but Sri M. Venkateswarlu, the learned counsel for the defendants stated that he has to get instructions and that he objects to the fourth defendant being sent out of the Court.

The Court ordered the fourth defendant to leave the Court hall. On that, Sri Venkateswarlu stated that he would not proceed with the suit and that he would carry the matter in revision to the High Court. Thereupon the examination of the

witnesses was stopped and the case was adjourned and this revision was filed by the fourth defendant questioning the power and the jurisdiction of the Court to order him out of the court hall when he was instructing his counsel with regard to the examination of his witness.

It may be noted that the objection raised by the plaintiffs counsel to the presence of the fourth defendant in the Court hall when the latter's witnesses were being examined was only oral. But, here, in the High Court, in the affidavit filed by the fourth defendant in support of the application for stay of trial of the suit pending this C. R. P. it is stated that the fourth defendant was in charge of the defence relating to the account sought of the trustees and that he was instructing his counsel throughout. The first defendant managing trustee could not do so as he was having blood-Pressure.

It is also stated that if he is ordered out of the Court hall, it will not only inconvenience his counsel, but will render the defence difficult because there are details in the matter of the account sought, of which the fourth defendant is more aware than others and of which he had to remind his counsel from time to time and that the objection to his presence taken by the plaintiffs was mala fide and was intended only to make the defence difficult.

To this affidavit, a counter-affidavit was filed by Muddana Venkatasubbiah, who is the fifth plaintiff. In Paragraph 3 of the counter-affidavit, it is stated that the fourth defendant was asked to go out of the court hall while the examination of his other witnesses was going on, because the fourth defendant himself is a witness for the defendants and due to his personal influence, the other witnesses may feel embarrassed to depose against him. Hence, it is stated, that while he himself is to be a principal witness, if he were allowed to be present, he would try to Patch up the evidence when his turn comes.

It is not clear from the order of the learned Judge whether these allegations and counter-allegations were made before him and whether he considered these matters before he ordered the fourth defendant out of the Court hall when his other witnesses were being examined. Whatever it be, it is necessary to consider whether the court has got the power to order Parties and their witnesses out of the Court hall during the trial of the suit when the examination of the witnesses is going on.

2. Sri B.V. Subramanyam, the learned counsel for the petitioner, relied upon an observation in *In Re: Vemureddi Babureddi*, . Sir John Wallis Kt. C.J. observed at p. 917 (ILR Cal) : (at P. 424 of AIR) as follows:

"The rule as to the exclusion of witnesses from Court until they have been examined is not without exceptions. It does not extend to the parties themselves in civil cases, so long as they conduct themselves properly....."

The learned Chief Justice referred to Roscoe's *Nisi Prius*, Vol. 1 (p. 159), 18th Edn. and also pointed out that the same rule applies in criminal cases (Roscoe's

Criminal Evidence p. 114-13th Edn.) It is also stated that it has never been suggested that the fact that in England the accused is now a competent witness justifies his exclusion from the Court during the trial. The present question did not really arise in that case and this observation of the learned Chief Justice is only an obiter. But it is entitled to very great weight.

In Roscoe's Nisi Prius, Vol. 1, at p. 159 it is stated that a Party can now be a witness, and that "as such he is perhaps liable to be ordered out of the Court." Relying upon the observation of Sri John Wallis Kt. Chief Justice the learned counsel for the petitioner contended that the petitioner being a party is entitled to remain in Court when his witnesses are being examined in order to instruct his counsel especially in a case like this when the evidence relates to accounting. He also Pointed out that no reasons are given by the lower court for ordering his client out of the Court hall and that what appears from the order is that his client was ordered out of court merely because he is a party to the suit.

3. The first question for consideration is whether a Court has got power to order unexamined witnesses out of Court until their evidence is taken. Neither the Evidence Act nor the Code of Civil and Criminal Procedure contain any section Or rule for ordering witnesses out of court although it is generally done by the courts as a matter of practice. In my view, the court has inherent power to regulate the business of the court in the way it thinks best or to make any order that may be necessary for the ends of justice.

I am also of the opinion that even in the absence of any specific provision in any enactment, the Court has power to order that no witness who has to give evidence should be present when the depositions of other witnesses are being taken until he himself is examined as a witness in full. In Halsbury's Laws of England, Vol. 15, Simonds Edn. at page 439, the rule of Practice is stated to be that at any time during the course of a trial, on an application of any party, the Judge may order witnesses in the case to leave the Court until called for.

The authority for this is stated to be Selfe v. Issacson, (1858) 1 P and F 194 : 175 ER 688. Again in Halsbury's Laws of England, Vol. 10, at p. 470, it is stated that unexamined witnesses may be ordered out of court at the request of either party. It is therefore clear that the court has power to order unexamined witnesses out of court at any time during the trial on the application of either party.

4. The next question that arises for consideration is whether a party to a litigation when he also wants to examine himself as a witness can be ordered out of the court hall unless he examines himself first as his own witness. Sri Subrahmanyam contended that he cannot be so ordered, for the reason that parties are entitled to be present in the Court during the trial of the suit and in support of this he relied upon a statement in Roscoe's Criminal Evidence, 16th Edn. p. 14-5 to the effect that a defendant, if a witness or not cannot be ordered out of Court while ha behaves himself becomingly. Sri M. Jagannadha Rao, the

learned counsel for the respondent, drew my attention to a passage in "Wigmore on Evidence", 3rd Edn. Vol. 6. In the Chapter relating to Sequestration of witnesses, it is pointed out at P. 364 as follows;

"The case of the party himself is more difficult. It is apparent that the danger of an attempt to falsify testimony and the utility of sequestration to expose it are most emphatic for a party who is a prospective witness. On the other hand, the party's aid in the conduct of the cause may be indispensable, and his absence is in any case hardly consistent with his general right to protect his interests by watching the conduct of the trial; in the United States, or in most parts of it, these "Considerations (looking to the ordinary relations of client and counsel), are probably more forcible than in England, where the counsel has full independence and professional authority. The simple solution, avoiding both horns of the dilemma, would be to exempt the party from the order of exclusion, but to require him to take the stand first of the witnesses on his side; on the principle that, though he has the right to be Present, yet he has also the duty to do all that is feasible towards preventing suspicion and subserving the opponent's right to sequestration. This particular solution, however, seems not yet to have been reached by any Court. A few courts treat the party upon the footing of other witnesses, but others declare him entitled of right to remain, ordinarily or invariably, and the latter view has been generally preferred in legislation."

It is also held in *Outram v. Outram*, 1877 WN 75 that as parties are competent witnesses, they, like the other witnesses may be excluded from the Court during the examination of any other witnesses.

5. It is undoubtedly true that a party to a litigation has got the right to remain in Court while the trial of the suit is going on and it is equally well established that the court has got inherent power to order any person who has to give evidence out of Court hall when other witnesses are being examined until that person is called to give evidence. The difficulty is how to reconcile these two rights with each other.

Under Section 135 of the Evidence Act the order in which witnesses are to be produced and examined shall be regulated by the law and practice for the time being relating to Civil and Criminal Procedure respectively and in the absence of any such law, by the discretion of the Court and it has been held in *Jarat Kumari Dassi v. Bissessur Dutt*, ILR 39 Cal 245, by Woodroffe, J. that the Court has always the power to do this u/s 135 of the Evidence Act.

In my view, the proper procedure to be followed in cases like this is as follows: Since u/s 133 of the Evidence Act, the Court has the power to prescribe the order in which witnesses are to be examined, where a party is also a witness, the Court can require him to give evidence before he examines his other witnesses. If he is not willing to do so, the Court can order him out of the Court hall when his other witnesses are giving evidence. This procedure ensures to the party his

right to be Present in Court when his suit is being tried.

At the same time, it does not interfere with the court's power to prescribe the order in which the witnesses are to be examined. Sri Subrahmanyam poses the question as to what is to happen if the party himself is conducting the case without the aid of any counsel. The answer is simple. He can examine himself first and then examine his other witnesses. In my view, even in such a case, this is the procedure to be followed so as to avoid any suspicion that the weak parts of the evidence of any other witnesses will be patched up later by the party himself when he enters the witness box.

6. In the present case, the learned Judge has not given any reasons for ordering the fourth defendant out of the Court hall when D. W. 1" started to give evidence for him without ascertaining whether he wants to give evidence on his behalf. In my opinion, the Court has to consider whether the claim made by one party to exclude the other party from the court hall is well-founded and also to consider the objections of the other party and then decide whether it is necessary in the interest of justice to order any party out of the court hall during the examination of witnesses.

If the court thinks that the presence of the party in the Court hall when his other witnesses are being examined will not ensure a fair trial, it is certainly competent for the court to order that party to leave the court hall when his other witnesses are being examined, unless he examines himself in the first instance. The order of the lower court does not show that he had in his mind, the principles stated above. In my view, the Court should have ascertained from the Petitioner whether he wants to examine himself as a witness and if he wants to examine himself, the Court has to direct him to examine himself first. This was not done by the lower court.

I therefore set aside the order of the lower court and direct it to reconsider the matter after hearing the learned counsel for the plaintiffs and defendants and make such order as it thinks fit in the light of the observations in this judgment. The O. R. P. is thus allowed and the matter remitted to the lower court. I wish to point out that the court has always got the power to order any party or a witness or any person Present in Court to leave the court hall if he does not behave properly, or his presence is likely to embarrass or influence any of the witnesses.