
(1997) 04 AP CK 0087

In the Andhra Pradesh High Court

Case No : C.R.P. No. 2588 of 1996 and CRP SR No's. 64574 and 64577/96

Cheemakurthi Sree Krishna Mohan Rao and Another

APPELLANT

Vs

Naragani Nagabhushanam and Others

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 18 Rule 17A, Order 41 Rule 27

Citation : (1997) 3 ALT 604 : (1997) 2 APLJ 409 : (1997) 2 CivCC 278 : (1997) 4 RCR(Civil) 457

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : K.V. Simhadri, for the Appellant; S. Sriramachandra Murthy, for the Respondent

Judgement

V. Bhaskara Rao, J.—These three Civil Revision Petitions are interconnected and they are directed against three separate orders in different Interlocutory Applications in O.S. No. 42 of 1988 on the file of Principal District Munsif, Eluru. Hence they are being disposed of by this common order.

2. The facts and circumstances giving rise to these three Civil Revision Petitions are as under :

The Revision Petitioners herein are plaintiffs in O.S. No. 468 of 1987. The case is said to be at the stage of arguments as both sides have adduced oral and documentary evidence. At this stage, the petitioners herein came to know that P.W.2 is having certain documents in his possession and hence they filed I.A. No. 1475 of 1996 under Order 13 Rule 2 C.P.C. seeking permission to file the same by explaining the reasons for their failure to produce the same earlier. An affidavit of P.W.2 is filed in support of the petition. They also filed I.A. No. 1476 of 1996 under Order 18 Rule 17-A to recall P.W.2 for the purpose of marking those documents and I.A. No. 1477 of 1996 u/s 151 C.P.C. to re-open the case. No counters are filed by other side. The learned Munsif held that the matter is

pending since 1988 and sufficient opportunity was given to the petitioners and that these petitions are meant to drag on the matter and thus he dismissed all the petitions. Hence, these three Civil Revision Petitions are filed.

3. In C.R.P. No. 2588 of 1996 the question is whether Order 13 Rule 2 C.P.C. is attracted. Since the documents were not in the possession or custody of the parties or their pleaders, but they were in the custody of the third party i.e., P.W.2, Sri Sreeramachandra Murthy contended that Order 13 Rule 2 C.P.C. is not applicable. After hearing at length both the learned Counsel and going through the relevant provisions of law, I am of the view that no petition under Order 13 Rule 2 C.P.C. is required in such a case. The best course would have been to serve a notice upon P.W.2, who was said to be in custody, to produce those documents and to recall him with the permission of the Court for proving those documents. One of them is a registered sale deed and another is a certified copy of the plaint in another suit and one more document is certified copy of order in I.A. No. 1433 of 1989. The other documents are said to be original ledgers from 1945-1946 onwards. It is strenuously contended by Sri Simhadri, learned Counsel for the Revision Petitioners that they are all relevant and material documents and the Revision Petitioners will suffer irreparable loss if they are not permitted to be filed and received in evidence. The only objection raised by Sri Sreeramachandra Murthy learned Counsel for the respondents is that Order 13 Rule 2 C.P.C. is not at all attracted. Be that as it may.

4. The fact that the suit is at the stage of arguments is not in dispute. It is true that it is an old suit but it does not mean that valuable evidence which is sought to be produced should be shut out. It is a well settled principle that any amount of evidence which is sought to be produced by the parties should be permitted to be adduced. It may be remembered that if for any reason the parties fail to produce documents for reasons beyond their control, or for want of knowledge, all those documents can be received in appeals as additional evidence under Order 41 Rule 27 C.P.C. I am fortified in my view by a judgment of this Court in Sreedhar Finance Vs. Jurra Lingayya and Another, Therefore, I hold that before a judgment is pronounced, the trial Court must be liberal in permitting the parties to adduce as much evidence as they desire. Keeping these principles in view, I am satisfied that the matter is fit to be reopened and P.W.2 should be recalled for further examination. The documents which are sought to be filed along with I.A. No. 1475 of 1996 are already in the Court. It may, however, be expedient to direct the lower Court to fix a time-frame for completing the trial and to dispose of the suit expeditiously and if necessary, day to day trial may be held as the suit is of the year 1988.

5. Order 18 Rule 17-A envisages terms having regard to the long lapse of time in filing the documents and seeking re-opening of the matter. I am of the view that costs of Rs. 500/- to be paid to Sri Sreeramachandra Murthy, learned Counsel for the respondents will meet the ends of justice.

6. With the above observations all three Civil Revision Petitions are disposed of

and consequently I.A. Nos. 1476 of 1996 and 1477 of 1996 stand allowed and I.A. No. 1475 of 1996 stands disposed of as unnecessary and the lower Court is directed to complete the trial keeping in view the above observations.