
(2008) 08 AP CK 0053
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2346 of 2008

G. Gayathri and Another	Vs	APPELLANT
M. Bhagyalakshmi and Others		RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A

Citation : (2009) 1 ALD 421 : (2009) 6 ALT 91

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : R.V. Subba Rao, for the Appellant;

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—This C.R.P. is directed against the order dated 31-1-2008, passed by the Principal Senior Civil Judge, Ananthapur, dismissing the application in I.A. No. 525 of 2007 in O.S. No. 9 of 1999, filed by the petitioners, and refusing to permit the 2nd petitioner to give evidence on behalf of the 1st petitioner.

2. The learned Counsel for the petitioners submitted that since the 2nd petitioner is conversant with the facts of the case, the Court below ought to have allowed the application filed by the petitioners and permitted the 2nd petitioner to give evidence on behalf of the 1st petitioner, and therefore, the order passed by the Court below, refusing to permit the 2nd petitioner to give evidence on behalf of the 1st petitioner, has to be set aside. In support of this argument, he placed reliance on the judgment of this Court in Jaldu Visveswara Rao and Others Vs. Mandala Dhana Lakshmi, .

3. Having heard the learned Counsel for the petitioners and having perused the order under revision, the only question that arises for consideration in this C.R.P is whether the 1st petitioner, who is the plaintiff, can be permitted to examine on her behalf, her husband, who is the 2nd plaintiff in the suit.

4. To consider this question, it is appropriate to refer to the provisions of Order XVIII Rule 3A of the Code of Civil Procedure, which reads thus:

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

5. From the above provision of law, it is clear that where a party intends to appear as a witness he/she shall so appear before any other witness on his/her behalf had been examined, unless the Court, for reasons to be recorded, permits such a party to appear as his/her own witness at a later stage.

6. The procedural law or any other law does not require that a party to the proceedings shall appear in Court in support of his/her case. Rule 3A of Order XVIII of the Code of Civil Procedure, is discretionary in nature. The provision is silent as to the stage at which leave is required to be obtained by the party to the proceedings. A plain reading of the Rule 3A, makes it clear that it is mandatory in nature to the extent that a party to the proceedings cannot be examined as a witness at a later stage without obtaining the leave of the Court. However, the party to the proceedings, can seek leave of the Court even after its witnesses are examined, and it is within the discretion of the Court whether or not to grant leave to the party who makes an application to get himself/herself examined at a later stage.

7. In the case on hand, the 1st petitioner sought to examine on her behalf, her husband, who is the 2nd petitioner, as if he is plaintiff No. 1 and not as a witness. The law, which is settled, does not prohibit examining a witness on behalf of a party to the proceedings, but it does not contemplate examining a witness, treating him/her as a party to the proceedings. In *Jaldu Visveswara Rao and Ors. v. Mandala Dhana Lakshami* (supra), on which the learned Counsel for the petitioners placed reliance, it was held by this Court that wife can examine her husband as a witness on her behalf even without examining herself as a witness, in the first instance. In the instant case, it is not the case of the 1st petitioner that she wants to examine the 2nd petitioner, who is her husband, at the first instance, but she intends to examine her husband, as if he is the 1st plaintiff, which cannot be permitted, particularly when the record shows that the 1st petitioner signed the pleadings. The 2nd petitioner, who is the husband of the 1st petitioner, cannot be treated as a plaintiff and record his evidence as if he is the plaintiff in the suit. Therefore, reliance placed by the petitioners on the judgment referred to above, would not assist them in any manner, because in the said case, the wife sought to examine her husband at the first instance. The 1st petitioner, even before examining herself as a witness, has filed the present application, seeking to permit her husband to examine not as an independent witness, but to depose on her behalf, as if he is the 1st plaintiff. Further, the 1st petitioner has not executed any power of attorney in favour of the 2nd petitioner for defending the case and permitting him to give evidence on her behalf.

8. For the foregoing reasons, I find no reason whatsoever to interfere with the order under revision.

9. There is no merit in the C.R.P and the same is accordingly dismissed. No costs.