
(1987) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2099 of 1987

Gottumukkala Venkata Krishna Raju

APPELLANT

Vs

Bhupathiaju Jayalakshmi

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 1, Order 18 Rule 2, Order 18 Rule 2(4), 115

Citation : (1987) 11 AP CK 0004

Hon'ble Judges : P.A. Choudhary, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant;

Final Decision : Dismissed

Judgement

P.A. Choudhary, J.—Four Plaintiffs joined together in suing Defendants 1 to 8. The suit is filed for passing of a decree in favour of the four Plaintiffs and the Defendants 3 to 8 who have common interests with those of the Plaintiffs. It is the first and the second Defendants whose interests are adverse to those of the Plaintiffs and the interests of Defendants 3 to 8 that are contesting the Plaintiff's suit. Both in substance and in form the suit is for grant of a relief in favour of the Plaintiffs and Defendants 3 to 8. As to be expected the third Defendant filed a written statement supporting the case of the Plaintiff. The Defendants 4, 6 to 8 adopted that statement, while the 5th Defendant remained ex-parte. Thus the only Defendants who are contesting the claim of the Plaintiffs in the suit are Defendants 1 and 2. The Plaintiffs have opened their case, gave evidence in support of their case and had duly closed it. Thereafter, the contesting Defendants had adduced evidence and closed their case. The evidence of the Plaintiffs adduced was in support of the common case of the Plaintiffs and the supporting Defendants. In the Plaintiff's evidence, there is nothing adverse to the case of the supporting Defendants. The evidence of contesting Defendants 1 and 2 was subjected to cross-examination by the Plaintiff's advocate for the

benefit, of the Plaintiffs and also for the benefit of the supporting Defendants. May be for that reason the advocates of the supporting Defendants had never chosen to cross-examine the evidence of the contesting Defendants 1 and 2. Now when the trial reached a stage where the evidence of the contesting Defendants was over, supporting Defendants 3 to 8 applied to the Court for adducing their evidence. They are now asserting their right to lead their evidence. The contesting 2nd Defendant objected to the request of the supporting-Defendants as too late and filed I.A. No. 1321 of 1921 requesting the Court not to permit Defendants 3 to 8 to adduce evidence at that stage of the trial. That application was allowed by the learned District Munsif, Bhimavaram, giving rise to the filing of this revision petition u/s 115 CPC by the supporting Defendants. The question that falls for consideration in this case is whether the lower Court is right on the facts and circumstances of the case in refusing leave to the supporting Defendants to adduce their evidence after the contesting Defendants had closed their case. In the lower Court it was argued for the contesting Defendants that in fairness of trial the supporting Defendants should have led their evidence if they so desired next to the Plaintiffs and not after the evidence of the contesting Defendants was over. This argument of the contesting Defendants was accepted by the lower court on the finding that the supporting Defendants are sailing with the Plaintiffs and allowing such parties to a suit to adduce evidence after the evidence of the contesting Defendants was closed would amount to permitting the Plaintiffs to fill up the gaps in the Plaintiffs' side of the evidence.

The question as to who should be permitted to lead evidence and at what stage is not exhaustively dealt with by the provisions of the CPC the wit of which does not lie in its brevity. This statute which is the great source of all our major legal disputations over the questions of proper procedure to be applied by the courts in trying the civil suits, has only one provision dealing with this question. Order 18 Rule 1 CPC recognises generally the Plaintiff's right to begin the case, because it is on him the law places burden of proving his case. Rule 2 of Order 18 succumbing to the pressure of requests for adjournments says that either on the day fixed for the trial of the suit or any other day to which the hearing is adjourned the party having the right to begin shall state his case and produce his evidence and thereafter the rival party should state its case and lead evidence. The party beginning will then have a right to reply generally. The evidence is then closed. These provisions work well enough when all the parties are neatly arraigned either on the side of the Plaintiffs or Defendants. But when there are non-co-operating Defendants having common interest with the Plaintiffs, the situation gets complicated. Order 18 provides no express guidance in dealing with that situation: Nor does it tell us when a court witness should be examined. One cannot find anything in support of or in opposition to the claims of a supporting Defendant to lead evidence after the evidence of the contesting Defendants is over. These questions have therefore to be decided upon by the courts on the basis of general principles of fair procedure and sense of justice it

is no wonder that only two cases are reported in Shah Hiralal Himatlal and Others Vs. M.G. Pathak and Others, reported in Jhumpa Bewa and Others Vs. Sahadeb Rout and Others, have been cited at the Bar on this point. These cases lay down a Rule that should be followed in such a situation. That Rule says that the right of the supporting Defendants to adduce evidence shall normally be exercised before the evidence of the contesting Defendants was closed. With respect I say that such a Rule contributes to general orderliness in trial of suits. Otherwise, the trial of suit is likely to end in confusion with the parties being free to fill up the gaps in their side of their closed cases. Judging by that yardstick I am of the opinion that the order of the lower court in not permitting the supporting Defendants to lead evidence after the closure of the evidence of the contesting Defendants should be upheld and this civil revision petition should be dismissed.

3. But it is argued by Sri T. Veerabhadrayya, learned Counsel for the Petitioners in this civil revision petition, that his clients were the victims of the lower Court's failure to warn them of their right to lead evidence. He said that the court should have invited them to lead their evidence after the Plaintiffs evidence was over. In as much as the Court below had failed to perform that duty he argued that the supporting Defendants should now be allowed to adduce evidence even after the closure of the evidence of the contesting Defendants. I cannot agree with this contention. In my opinion the courts owes no such duty to the supporting Defendants. The orelically our method of trial of the rival claims of the contesting parties in suits is not very much different from the duelling methods of trial by fire and water of the ancient days. In an adversary system of justice the duty of the Court is merely to umpire and enforce the Rules of the game keeping itself always above the battle. Being insensitive to the result and-in different to the fate of the suit and taking no steps unless moved are the hall-marks of this machine. It can see the truth only through the partisan windows opened by the advocates. Fortunately much of this theory is not practised in our courts. But it is never for the court to invite a party to exercise its right of leading evidence. Law expects the illiterate parties or their lawyers to decide these complicated questions whether to exercise or not to exercise these rights. The parties can give up their rights. It is all the more so in a case like this where the supporting Defendants can easily give up their right to lead evidence without suffering any detriment to their interests. Having been satisfied with the evidence that has already been led by the Plaintiffs for their common good, the contesting Defendants might have well chosen not to go into the box. In these circumstances, I cannot agree with the learned Counsel's contention that the failure of the court to warn the supporting Defendants about their right to lead evidence would make any difference. The other argument of the learned Counsel for the Petitioners that under Order 18 Rule 2 Sub-rule (4) the Court may permit the supporting Defendants to adduce their evidence in this case cannot be accepted either. Order 18, Rule 2 Sub-rule (4) reads as follows:

Notwithstanding anything contained in this Rule, the Court may, for reasons to

be recorded, direct or permit any party to examine any witness at any stage.

Firstly it must be noticed that Sub-rule (4) merely enacts an exception to Order 18 As Order 18 does not deal with this question at all, its exception cannot apply to this situation. Secondly this Sub-rule (4) does not in express terms authorise the supporting Defendants to lead evidence after the closure of the evidence of the contesting Defendants. But this is not to deny the court's inherent powers to permit a party or any other person to lead evidence in the interests of justice at any stage of the trial. That is an inalienable right of the courts which should always be upheld and should be jealously guarded. All I say is that this is not that case for the use of the inherent powers of the Court. Such inherent power cannot be allowed to be used by a scheming party to fill up the blanks and close the gaps created by them willingly or unwillingly but certainly knowingly.

4. For the above reasons, I do not see any merit in this civil revision petition. It is accordingly dismissed.