
(2011) 07 AP CK 0017

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1380 of 2008 and CRPMP. No. 4533 of 2009

John Susheel Kale and Mrs. Nirmala Kale

APPELLANT

Vs

S. Devarajulu and. P.V.G.K. Murthy

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A, 115
Constitution of India, 1950 — Article 227

Citation : (2011) 5 ALD 424 : (2011) 4 CivCC 749

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; S.C. Rangappa and P.V.G. Krishna Murthy, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar, J.—Petitioners are Plaintiffs in O.S. No. 217 of 2001 before the Court below. In the suit filed by them the first Plaintiff has been examined as P.W.1 and two other witnesses have been examined as P.Ws.2 and 3. The record of the case shows that P.W.3 examined by the Plaintiffs did not support the Plaintiff and hence, was declared hostile and the Petitioners/Plaintiffs were given opportunity to cross-examine him. Thereafter, the Petitioners filed an affidavit in lieu of chief examination of Plaintiff No. 2, which was objected to by the Respondent/Defendant citing the provisions of Order 18 Rule 3-A of the Code of Civil Procedure, 1908 on the ground that No. permission having been obtained to examine Plaintiff No. 2 as P.W.4, the chief affidavit of Plaintiff No. 2 in lieu of chief examination is liable to be eschewed. That application of the Defendant was numbered as I.A. No. 485 of 2006 and was allowed by the trial Court on 31.08.2006.

2. Questioning the aforesaid order, the Petitioners filed CRP. No. 4765 of 2006 before this Court, which, on consideration, was dismissed by this Court by order dated 04.01.2007. Inter alia, this Court held that without obtaining permission of

the Court the Plaintiff cannot examine himself after other witnesses are examined on his behalf under Order 18 Rule 3-A Code of Civil Procedure. In view of the said findings, the Petitioners have filed the present application before the court below being I.A. No. 153 of 2007 seeking permission of the court under Order 18 Rule 3-A Code of Civil Procedure, as above, to examine Plaintiff No. 2 as witness. The said application was again contested by the Defendant and by the impugned order dated 13.04.2007 the same was dismissed. Hence, this revision petition.

3. Heard the first Plaintiff, who appeared as party-in-person and Mr. S.C. Rangappa, learned Counsel for the Respondent/Defendant.

4. At the outset the learned Counsel for the Respondent raised an objection as to the maintainability of this revision petition u/s 115 CPC but the said question does not survive in view of CRPMP. No. 4533 of 2009 filed by the Petitioners seeking conversion of the present revision petition as one under Article 227 of the Constitution of India by paying the deficit Court fee also. CRPMP. No. 4533 of 2009, in the circumstances, is, therefore, ordered as prayed for.

5. The party-in-person has placed reliance upon the decision of the Supreme Court in Dattatraya Vs. Rangnath Gopalrao Kawathekar (Dead) by his legal representatives and Others, particularly para 5 thereof and relies upon the following passage:

...Ordinarily No. one is expected to sign a document without knowing it's contents but if it is pleaded that the party who signed the document did not know the contents of the document then it may in certain circumstances be necessary for the party seeking to prove the document to place material before the court to satisfy it that the party who signed the document had the knowledge of its contents.

Reliance is also placed upon the decision of this Court in K.V. Prasad Reddy Vs. Yarabolu Hariprasad Reddy, particularly para 4 thereof, which is as follows:

4. Since Rule 3-A of Order 18 CPC vests the Court with the power to permit a party to be examined at a later stage for reasons to be recorded, it is clear that the fact that a party did not obtain permission earlier to examine himself at a later stage, per se, is not a ground to refuse the permission to examine himself as a witness at a later stage. So, petition seeking permission to examine a party as a witness can be filed at any stage during the pendency of the suit, but reason for seeking permission at a belated stage will have to be examined, to enable the Court to record reason for granting permission, provided it wishes to exercise its discretion to grant such permission. So, merely because a party did not reserve his right to come into the witness box, before he examines his witnesses, he ipso facto does not lose his right to examine himself as a witness at a later stage. He can, by giving reasons for his failure to examine himself as a witness earlier, seek permission of the Court to depose in support of his case.

6. Based on the above decisions, it is stated by the party-in-person that till examination of P.W.3 there was No. necessity for Plaintiff No. 2 to depose but after P.W.3 turned hostile disowning the affidavit affirmed before the notary-public it was necessary for Plaintiff No. 2 to examine herself to lead evidence, within her personal knowledge, in rebuttal of the false statement made by P.W.3 in his cross-examination as well as in relation to the conduct of P.W.3 in connection with his deposing to the three affidavits filed before the Court below. The aforesaid ground specifically mentioned in para 8 of their affidavit is pressed into service and it is contended that the Court below has not appreciated the issue in proper perspective and has not examined the matter from the point of view of the purpose for which Plaintiff No. 2 is proposed to be examined. It is also stated that the decision of this Court in the earlier revision petition would not stand in the way in view of the fact that at that stage No. permission of the Court was sought for and it is only now that the application for grant of permission has been made.

7. Mr. S.C. Rangappa, learned Counsel for the Respondent, on the other hand, submits that after examination of P.W.3, the Plaintiffs were given opportunity to cross-examine P.W.3 and as per the pleadings of the Plaintiffs themselves, Plaintiff No. 2, even otherwise, is not an eyewitness to the affidavits executed by P.W.3 marked in the suit as Exs.A18 and A20. Learned Counsel, therefore, states that the attempt to examine Plaintiff No. 2 is only to fill in the gaps in the evidence and is clearly hearsay evidence unnecessary to be laid. Learned Counsel also states that the order in the earlier revision petition is resjudicata for consideration of the present revision.

8. I have considered the rival submissions. So far as the last of the contentions of the learned Counsel for the Respondent/Defendant that the order in CRP. No. 4765 of 2006 amounts to resjudicata is concerned, I am of the view that the said contention is not correct. The order in CRP. No. 4765 of 2006 concerns only the proposition as to whether the Plaintiff can examine himself after other witnesses without seeking permission of the Court and the said aspect was answered in the negative whereas the present application is for seeking permission of the Court.

9. Further, as held by the Division Bench of this Court in Devarapathi Pattabhi Ramaiah Vs. Daruhiri Lakshmi Presanna and Another, the party to the suit can examine himself as a witness even if he makes an application after examination of some witnesses on his behalf and even if he has not sought such permission before commencement of examination of his witnesses. It was, however, held that while seeking such permission the Court ought to be satisfied that it was not a deliberate ploy on the part of the Plaintiff to withdraw himself from examining before his other witness. The Division Bench has recorded the following passage in the judgment, which is very relevant to be noticed herein:

...Pursuant to the recommendations of the Law Commission in the 54th report with an intention to prevent the notorious practice indulged in by litigants in examining other witnesses first and later covering up the gaps by the

examination of the parties themselves later, to substantiate their case...

11. Number of judgments relied upon by the Respondents' Counsel referred to above hold the view that there is No. inflexible rule as to the point of time at which the permission of the Court can be accorded under Rule 3-A of Order 18 of the CPC against the abuse of the process is that the Court while according permission to depart from the general rule enshrined under Rule 3-A of the CPC is required to record reasons and goes without saying that such reasons must be cogent and germane to the issue. Once the reasons are recorded, they are open to scrutiny by the appellate Courts.

10. To the same effect is the decision of this Court in K.V. PRASAD REDDY's case (2 supra). Therefore, on the second aspect it has be held that the Petitioners were well within their rights to seek permission of the Court to examine Plaintiff No. 2.

11. The third question, which is required to be considered is whether the Court below under the impugned order was justified in refusing to give such permission for the reasons stated by it in its order. The Court below has given more than one reason in support of the order viz. that Plaintiff No. 2 does not appear to be a witness as is evident from the pleadings and as such, her evidence would be in the nature of hearsay evidence; that after P.W.3 was declared hostile and cross-examined by the Plaintiffs, P.W.1 intended to recall and re-examine, which was disallowed by dismissed I.A. No..287 of 2006 filed by the Plaintiffs. The present application according to the Court below is one more attempt to achieve what the Plaintiffs could not achieve in I.A. No. 287 of 2006. Further, para 9 of the affidavit of the Petitioners filed in support of this revision petition states that the Plaintiffs want to rebut the evidence of P.W.3, as rightly stated by the Court below that the party cannot rebut its own evidence or evidence of its own witnesses. The Court below, therefore, recorded its satisfaction that permitting the second Plaintiff to depose would result in plugging the gaps in the evidence of the witnesses already examined on behalf of the Plaintiffs and as such, No. cogent or germane reasons were found by the Court below.

12. After hearing this matter at length and after examining the records, I am also of the view that No. sufficient and cogent reasons are mentioned by the Petitioners/Plaintiffs in support of the present application nor any such compelling reason exists and appears from the record of the case. Furthermore, the Plaintiffs had adequate opportunity to cross-examine P.W.3 and the Court is informed that a detailed cross-examination of P.W.3 has been on record, which inter alia deals with all aspects of execution of the alleged notary affidavits and the credibility of P.W.3. This Court, therefore, expresses concurrence that permitting the second Plaintiff to examine now would amount to plugging the gaps in evidence and would cause serious prejudice to the Respondent/Defendant. The Court below, therefore, was justified in rejecting the said application and as such, the impugned order does not suffer from any infirmity, which warrants correction by this Court under Article 227 of the Constitution of

India.

The civil revision petition is accordingly dismissed. There shall be No. order as to costs.