
(1982) 04 AP CK 0016

In the Andhra Pradesh High Court

Case No : Civil Revn Petition No. 2518 of 1980

Kadium Paparao

APPELLANT

Vs

Siddireddy Satyanarayana and Others

RESPONDENT

Date of Decision : 16-04-1982

Acts Referred:

Evidence Act, 1872 — Section 33
Registration Act, 1908 — Section 75, 75(4)

Citation : AIR 1983 AP 257

Hon'ble Judges : Amareswari, J

Bench : Single Bench

Advocate : Jagannadha Rao, for the Appellant; T. Raman, for the Respondent

Judgement

Amareswari, J.—The short question that arises for consideration in this revision petition is whether the evidence of a witness before the Registrar in an enquiry under Sec. 75(4) of the Indian registration Act is admissible in a subsequent suit.

2. The petitioner is third plaintiff in O.S. No . 10 of 1976. The second plaintiff is his adoptive mother and the first plaintiff is his adoptive father. The first plaintiff died during the pendency of the suit. The suit was based on a sale deed dated 28-6-1974 which was the subject matter of an enquiry before the sub-Registrar. Rajahmundry on O.E. No. 1 of 1974. In that enquiry the first plaintiff deposed the circumstances under which the sale deed was executed by the defendants as the first plaintiff died during the pendency of the suit this petition was filed to receive his deposition, given before the sub-Registrar for a Just decision in this suit.

3. The respondents opposed the petition primarily on the ground that O.F. No. 1 of 1974 was not a judicial proceeding. They also contended that the execution of the sale deed was not substantially in issue in this suit and hence it is not relevant.

4. The learned subordinate Judge, Rajahmundry by his order dated 31-3-1980

dismissed the application on the sole ground that the proceeding and hence the deposition given in such a proceeding is not admissible in evidence.

5. In this revision petition Mr. M. Jagannadha Rao the learned counsel for the petitioner mainly contended that the order of the trial Court is patently illegal and erroneous. He submitted that under sec. 33 of the Evidence Act evidence given by a witness before any person authorised by law to take it. Is relevant for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding the truth of the facts which it states when the witness is dead or cannot be found. In the present case the registrar or the sub-Registrar Acting u/s 75 of the Indian Registration Act is empowered to record evidence to summon and enforce the attendance of witnesses and compel them to give evidence. Therefore the evidence of the first plaintiff given before the Registrar in an enquiry under sec. 75 of the Act is admissible in evidence.

6. To appreciate this contention it is useful to extract sec. 33 of the evidence Act:-

"33. Evidence given by a witness in a judicial proceeding. Or before any person authorized by law to take it is relevant for the purpose of proving in a subsequent judicial proceeding. Or in a later stage of the same judicial proceeding the truth of the facts which it states when the witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by the adverse party or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:-

Provided that the proceeding was between the same parties or their representative in interest: that the adverse party in the first proceeding had the right and opportunity to cross-examine that the questions in issue were substantially the same in first as in the second proceeding".

A reading of this section makes it clear that it is not only the evidence given in a judicial proceeding but the evidence given before any person authorised by law to take it is admissible in evidence The expression "or" used in sec. 33 indicates that not only the evidence given in a judicial proceeding but evidence given before any person who is authorised by law to take it is relevant in a subsequent judicial proceeding or in a later stage of the same judicial proceeding subject of course to the conditions mentioned therein namely, when the witness is dead or cannot be found etc.

7. Section 75 of the indian registration Act is as follows:-

"75. Order by Registrar to register and procedure thereon - (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with he shall order the document to be registered.

(2) and (3)

(4) The registrar may for the purpose of any enquiry under sec. 74 summon and

enforce the attendance of witnesses and compel them to give evidence as if he were a civil Court and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid and such costs shall be recoverable as if they had been awarded in a suit under the CPC 1908".

From this section it follows that in an enquiry under sec. 75 of the Act. The Registrar is empowered to take evidence and enforce the attendance of witness and compel them to give evidence as if he were a civil Court. Hence evidence given in such an enquiry is certainly admissible under sec. 33 of the evidence Act, subject to the limitations contained in sec. 33 namely that the subsequent proceedings are between the same parties that the adverse party in the first proceedings are between the same parties that the adverse party in the first proceeding had the right and opportunity to cross-Examine and that the questions in issue were substantially the same in the first as in the second proceeding. The application was not dismissed on the ground that any of the clauses mentioned in the proviso are attracted. It was dismissed on the sole ground that the evidence of the first plaintiff was not recorded in a judicial proceeding. The question whether the proceeding before the Registrar under sec. 75 of the Act are judicial proceedings or not is immaterial. If the evidence is given before a person who is authorised to take it under law and the person who gave the evidence is dead such evidence is admissible in evidence in a subsequent judicial proceeding or at a later stage of the same judicial proceeding since the evidence of the first plaintiff was recorded in a proceeding under sec. 75 (4) of the Indian Registration Act by a person who is authorised to take evidence in my view such evidence is clearly admissible in this suit which is a subsequent judicial proceeding.

8. In the result the civil Revision petition is allowed and the order of the learned subordinate Judge is set aside no costs.

9. Revision allowed.