
(1977) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 892 of 1976

Karumanchi Subba Rao

APPELLANT

Vs

Yarlagadda Venkatappaiah and Others

RESPONDENT

Date of Decision : 21-02-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Evidence Act, 1872 — Section 137

Citation : AIR 1978 AP 193

Hon'ble Judges : Lakshmaiah, J

Bench : Single Bench

Advocate : G.V.L. Narasimha Rao, for the Appellant; A.S.C. Bose, for the Respondent

Judgement

1. The point raised in this revision petition is whether a defendant who filed the written statement stating that the suit instituted by the petitioner plaintiff can be decreed as prayed for has got any right to cross-examine the plaintiff ?

2. This revision under S. 115 C. P. C. by the plaintiff is directed against the order passed by the learned Subordinate Judge, Bapatla in I. A. No. 270 of 1976 in O. S. No. 56 of 1970 dated April, 15, 1976.

3. O. S. No. 56 of 1970 was instituted by the petitioner before the court below for a declaration that the debt due by the plaintiff to the first defendant was partially discharged. Para 9 of plaint mentions about the relief and reads thus:

"Therefore the plaintiff prays that the court may be pleased to pass a decree in favour of the plaintiff against the 1st defendant,

(i) for declaration that the debt due by the plaintiff to 1st defendant under promissory note dated 19-12-1969 was discharged to the extent of Rs. 7315-41 or with alternative.

(1) for payment of Rs. 8023-00 by the 1st defendant.

(2) for payment of interest thereon at 12% p.a.

(3) for costs of this suit and

(4) for such other and further reliefs the Hon"ble Court deems fit and proper under the circumstances of the case."

4. The plaint averments are to the effect that the plaintiff and the defendants constituted themselves as partners of the firm styled as "Sri Satyanarayana Rice Mill Contractors, Karumanchi Brahmayya and Company, Bapatla (Reg)" for carrying on rice mill business, selling paddy etc. Defendants 2 to 8 are partners in the firm. Defendants 2 to 8 including defendants 3, 4 and 7 filed a written statement wherein they have stated in paragraph 4 thus :

The accounts filed by the plaintiff into court in this suit are true accounts of the partnership."

In paragraph 5 of the written statement it is further stated thus:

"Therefore this defendant prays that the court may be pleased to pass a decree in favour of the plaintiff against 1st defendant as prayed for and award costs of the suit to the defendants against 1st defendant."

5. Defendants 3, 4 and 7 filed I. A. 270/76 in O. S. No. 56 of 1970 under s. 151 C.P.C. requesting the court to permit them to cross-examine the plaintiff who was examined as P.W. 14. The third defendant gave the affidavit contending that the plaintiff filed the suit against all the partners including themselves and that they signed all the account books previously believing the plaintiff that he has properly shown the accounts. But during the cross-examination of plaintiff by the first defendant it came out that plaintiff did not maintain the accounts properly and the signatures of defendants was fraudulently obtained by the plaintiff on the account books. It is under those circumstances, the application giving rise to the above revision was filed by the petitioners to cross-examine the plaintiff at this stage.

6. Counter was filed by the plaintiff denying the allegations. It is stated in the counter affidavit that after the plaintiff entered the witness box there arose some ill-feeling between the petitioners and respondent in regard to other matters extraneous to suit and notices were exchanged between the present petitioners and respondents. Due to that ill feeling, to harass the plaintiff, the defendants took up this method, conspired and colluded with the first defendant and filed I.A. 502 of 1975 for filing a different written statement and it was dismissed. Therefore, the plaintiff contended in the counter that the original written statement filed by defendants 2 to 8 accepting the statement of accounts stands as correct and as such they are not entitled to cross-examine the plaintiff at this stage. If they have got any cause of action on the basis of fraud etc., they can agitate those rights in the suit O. S. No. 1 of 1976 and exercise their right of cross-examination but they have no right to cross-examine the plaintiff in this suit. According to the plaintiff, that petition was filed merely to harass him and

drag on the matter.

7. The court below allowed that petition observing that the defendants should be given a chance to cross-examine and that they may not be allowed to put questions contrary to averments in their written statement as they were not allowed to amend their statements. It was also observed by the court below that the objection raised by plaintiff is premature. It is under those circumstances this revision petition is filed.

8. Sri Narasimha Rao, learned counsel appearing for the petitioner contends for the position that the right to cross-examine the witness is conferred under s. 137 of the Indian Evidence Act only on a person who has adverse interest to that of a person who is sought to be cross-examined and in view of the fact that defendants 3, 4 and 7 filed written statement stating that the accounts of the plaintiff are maintained properly and in view of the further fact that these defendants said that the suit may be decreed in favour of the plaintiff as against the 1st defendant as prayed for, the defendants 3, 4 and 7 have no right to cross-examine the plaintiff, and if they are allowed it results in otherwise avoidable harassment to the plaintiff.

9. Sri A. S. C. Bose, learned counsel appearing for the respondents submitted on the other hand that a most innocuous order was passed by the Court below in permitting the defendants 3, 4 and 7 to cross-examine the plaintiff confining that only to the matters contained in the written statement and, therefore no injury much less irreparable one is supposed to have been caused to the plaintiff and as such, no case is made out for interference by this court under S. 115 C. P. C.

10. The point therefore, as already noticed, that arises for determination is whether the defendant who filed written statement stating that the suit may be decreed as prayed for by the plaintiff can be permitted to cross-examine the plaintiff.

11. S. 137 of the Indian Evidence Act reads thus :

"137. The examination of a witness by the party who calls him shall be called his examination -in-chief.

The examination of a witness by the adverse party shall be called his cross-examination. The examination of a witness subsequent to the cross-examination by the party who called him, shall be called his re-examination."

12. A reading of the aforesaid provisions of law indicates that the right to cross-examine the witness is conferred by the statute upon the person concerned only when he has an interest adverse to the one who is proposed to be cross-examined. The very purpose of the cross-examination is to test the veracity of the testimony of the witness. When the plaintiff as well as defendants 3, 4 and 7 as in this case, are sailing together in the sense that defendants 3, 4 and 7 requested the court as matter of fact to decree the suit of the plaintiff as prayed for by him and in view of the further fact that the defendants specifically stated

in their written statement that the accounts were maintained properly by the plaintiff, by no stretch of imagination defendants 3, 4 and 7 can be said to have any interest that can be characterised even remotely as adverse to that of the plaintiff. Under these circumstances, I am satisfied that Sri Narasimha Rao is quite correct in his contention that persons in the position of defendants 3, 4 and 7 cannot be said to have any right statutorily to cross-examine the plaintiff. When the defendants do not have such a right conferred upon them, permitting them to cross-examine the plaintiff would cause otherwise avoidable harassment to the plaintiff.

13. As against that, Sri Bose contends that most innocuous order was passed by the court below in the sense that the cross-examination is directed to be confined only to the contents of the written statement and if the petitioner has got any objection, he can raise it at the appropriate stage if the cross-examination exceeds or is going to be directed to a matter not mentioned in the written statement.

14. When once it is held that defendants 3, 4 and 7 have no right to cross-examine the plaintiff, the plaintiff should not be permitted to be harassed by exposing himself to the cross-examination of defendants 3, 4 and 7. Under those circumstances, I am satisfied that the jurisdiction conferred upon the court below was exercised illegally in allowing the petition filed by the defendants 3, 4 and 7 and permitting them to cross-examine the plaintiff as per the directions contained in the order sought to be revised against.

15. For the reasons aforesaid, this revision petition shall have to be allowed and it is hereby accordingly allowed but, in the circumstances without costs.

16. Petition allowed.