
(2005) 09 AP CK 0013
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3667 of 2005

Kodipaka Venkatesham

APPELLANT

Vs

Pasula Narsamma and Another

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4(1), Order 18 Rule 4(2), Order 26 Rule 1, 151

Citation : (2006) 1 ALD 437 : (2005) 6 ALT 702

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Rajamalla Reddy, for the Appellant; M. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Respondents 1 and 2 filed O.S.No. 19 of 2004, in the Court of Senior Civil Judge, Siddipet, for the relief of declaration of title and recovery of possession of the suit schedule property. They are represented through General Power of Attorney, by name Pasula Kistaiah. The petitioner is the sole defendant in that suit. The trial of the suit commenced.

2. The G.P.A. of respondents 1 and 2 filed an affidavit, in lieu of his chief-examination. Simultaneously, he filed I.A.No. 43 of 2005, under Order 26 Rule 1, read with Section 151 C.P.C., for appointment of a Commissioner, to record his cross-examination. He pleaded that he has undergone heart operation, and was advised bed rest, for six months. The petitioner opposed the application, by filing a counter affidavit. Apart from denying the alleged health condition of the GPA of respondents, they have also raised an objection, as to his competence to depose as P.W.1. Through its order, dated 21-4-2005, the trial Court allowed the I.A. Hence, this C.R.P.

3. Sri M. Rajamalla Reddy, learned Counsel for the petitioner, submits that Rule 4(2) of Order 18 C.P.C., as amended in the year 2002, cannot be resorted to, as

a matter of course. He contends that the cross-examination of a witness, that too of first witness, in a suit for declaration of title and recovery of possession, has its own significance, and except where extraordinary circumstances exist, the Courts would not be justified in appointing a Commissioner, for recording the cross-examination of such witnesses. He further contends that when a specific objection is raised, as to the very competence of the GPA to depose as P. W.1, the trial Court did not advert to the same, and mechanically allowed the I.A.

4. Sri M. Rama Rao, learned Counsel for the respondents, on the other hand, submits that the necessity for the respondents, to file I.A.No. 43 of 2005, arose on account of the fact that the G.P.A., who is conversant with the facts of the case, has undergone heart surgery, and was advised bed rest. He submits that the Parliament had amended Order 18 C.P.C., with a view to avoid burden upon the trial Courts, in the matter of recording of evidence, and even where objections are raised on behalf of any parties, during the course of recording of evidence by a Commissioner, adequate provision is made for disposal of the same.

5. The respondents filed the suit through their G.P.A. They intended to examine the G.P.A. himself, as P.W.1. The G.P.A. filed his affidavit, in lieu of chief-examination, as provided for under Sub-rule (1) of Rule 4 of Order 18 C. P.C. When it came to the question of cross-examination, he filed I.A.No. 43 of 2005, with a prayer to appoint a Commissioner for recording his cross-examination. The petitioner objected to the same, by raising questions of facts and law. He denied the very factual basis for filing the application, as well as the legal competence of the G.P.A., to depose as a witness.

6. It is true that Parliament amended Order 18 C.P.C., to enable the Courts to record the evidence of witnesses, in cross-examination and re-examination also, by appointing a Commissioner. While filing of affidavits, in lieu of chief-examination, was provided for, as a matter of course, appointment of Commissioner for cross-examination of such witnesses, is made discretionary. The reason for making this distinction is that the cross-examination of a witness in the Court, has its own significance. It is during this step that several questions and objections arise, and the Court is required to apply its mind. It is particularly so, in case of witnesses who depose about the pleadings in the suit. The admissibility and proof of the documents needs to be considered. It is difficult to expect the same from a Commissioner, in the matter of recording of evidence in cross-examination. The fact that the objections raised before the Commissioner, can be addressed to by the Court at a later stage, is of hardly any solace, at least as regards the principal witnesses. At any rate, the Court is required to record reasons, as to why it has chosen to appoint a Commissioner for recording the evidence of the witness in cross-examination.

7. A perusal of the order under revision, does not disclose that the trial Court applied its mind to the facts of the case. It simply proceeded on the footing that no prejudice would be caused to the respondents, if the witness is cross-

examined, on Commission. Much more is required in law, than such observation. Further, the question, as to whether the ailment complained of by the G.P.A. of the respondents continues even as of now, needs to be taken into account.

8. For the foregoing reasons, the C.R.P. is allowed, and the order under revision is set aside. However, the trial Court is directed to pass fresh orders in the I.A., after giving opportunity to both the parties. There shall be no order as to costs.