
(2003) 11 AP CK 0058

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3377 of 2003

Mannam Ramasubbaiah @ Ramasubba Reddy

APPELLANT

Vs

Mannam Jayaramaiah @ Jayarami Reddy

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2, Order 8 Rule 1A(3)

Citation : (2004) 1 ALD 838

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : L.J. Veera Reddy, for the Appellant;

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard the Counsel on record.

2. The learned Counsel representing the Revision petitioner/respondent/plaintiff submitted that Order 13 Rule 2 of the Code of Civil Procedure, hereinafter referred to as "Code" in short, had been omitted by Act 46 of 1999, made effective from 1-7-2002 and on this ground alone the application should have been dismissed by the learned Junior Civil Judge, Badvel and instead the application for reception of documents was allowed without recording any reasons and hence the impugned order cannot be sustained.

3. The present Revision is preferred as against an order made in I.A.No. 430/2003 in O.S.No. 274/98 on the file of Junior Civil Judge, Badvel. Though the application was opposed by filing a counter in detail, the said application was allowed on the ground that there is no hard and fast rule for not admitting documents before adducing the evidence of the party. The respondent in the present Civil Revision Petition/petitioner in I.A.No. 430/2003 is the defendant in the suit O.S.No. 274/98. This application was moved by the respondent under Order 13 Rule 2 of the Code praying for permission to receive the documents and

mark the said documents.

4. It is no doubt true that by Section 23 of Act 46 of 1999, Rules 1 and 2 of Order 13 of the Code have been substituted by the present Rule - Rule 1 so as to provide that the original documents of which copies have been filed with the plaint and written statement shall be submitted before the settlement of Issues is made by the Court. Rule 1 of Order 13 of the Code dealing with original documents to be produced on or before the settlement of Issues as substituted by Act 46/99 reads as hereunder :

5. Original documents to be produced at or before the settlement of issues :- The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

Apart from this aspect of the matter, Order 8 Rule 1-A(3) of the Code specifies that a document which ought to be produced in Court by the defendant under this Rule, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. It may also be relevant to have a look at sub-rules (1) and (2) of Rule 1-A of Order 8 of the Code, which read as hereunder:

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

As can be seen from the material available on record, the respondent/defendant had not followed this procedure at all and the learned Junior Civil Judge, Badvel had allowed an application filed under Order 13 Rule 2 of the Code which is no longer in existence on the statute book. Even otherwise, no reasons at least had been recorded for entertaining these documents at the belated stage. In any view of the matter, the impugned order cannot be sustained and hence the said order is hereby set aside.

Accordingly, the Civil Revision Petition is allowed. No costs.