

(2002) 02 AP CK 0180
In the Andhra Pradesh High Court
Case No : CRP No. 4723 of 2001

Narsi Reddy and Others

APPELLANT

Vs

Rami Reddy Gopaiah and Others

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 16 Rule 4, Order 16 Rule 5

Citation : (2002) 3 ALD 129 : (2002) 3 ALT 290

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : T. Hanumantha Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Dubagunta Subrahmanyam, J.—Plaintiffs in OS No. 10 of 1995 on the file of Senior Civil Judge, Nagarkurnool filed this revision petition.

2. During the evidence of DW3, the witness produced two documents, which were marked as Exs.X1 and X2 by the trial Court. The order of the trial Court in marking those two documents as Exs.X1 and X2, is challenged in the present revision petition. The suit is filed for declaration etc., relating to immovable property and the defendants are contesting the suit. On the application filed by the defendants, the Court issued summons to the witnesses DWs.2 and 3 to appear before the Court and give evidence. While giving evidence, the witness DW3 produced two documents. As per the recitals in those documents, the parties to the suit executed two separate agreements in favour of the village elders named in the documents to settle the dispute between the parties. Those agreements, which can be merely called as arbitration agreements, are executed by the parties after the suit in OS No. 10 of 1995 was filed by plaintiffs and before the defendants filed the written statement.

3. It is the contention of the plaintiffs-revision petitioners that in the written statement there is no whisper about any settlement and equally there is no

whisper about the two documents Exs X1 and X2 and therefore, they are not relevant documents.

4. The defendant filed IA No. 276 of 2001 requesting the trial Court to summon the present witnesses DWs.2 and 3. Notice of that petition was served on the plaintiff. In the affidavit it is clearly stated that DWs.2 and 3 settled the matter long back in the village between the defendant and plaintiffs as elderly persons. It is further stated in the affidavit that those persons are not coming to the Court unless summons are issued to them. The order passed by the trial Court indicates that counter was not filed and the said petition was allowed on payment of costs of Rs.50/-to the plaintiffs. Therefore, even though there is no reference to existence of the two documents Exs.X1 and X2, before the witnesses were actually summoned by the Court, the defendants in IA No. 276 of 2001 clearly disclosed that those witnesses are being summoned to give evidence about the attempts made by them to settle the disputes between the parties.

5. The learned Counsel for the revision petitioners drew the attention of this Court to the provisions contained under Order 16, Rules 1, 5, 6 and 7 of CPC. It is her contention that the witness can be summoned either to give evidence or to produce documents or for both the purposes. It is her contention that as the witnesses were not summoned to produce the documents concerned, the trial Court is not entitled to receive those documents and mark them as Exs.X1 and X2.

6. I do not find any substance in that contention in view of the facts of the present case. When a person comes to the Court to give evidence and when that person knows that his oral evidence can be supported or corroborated by documents already in his possession, in my considered opinion, even if the Court did not summon the documents concerned, witness is at liberty to produce the documents in Court to corroborate the oral evidence he is going to give before the Court. Production of relevant documents by the witness in his custody will go a long way to establish his credibility. Non-Production of relevant documents in his custody will make his oral testimony useless. Therefore, there is no substance in the present revision petition.

7. The learned Counsel for the revision petitioner however, contended that a petition under Order 13, Rule 2 CPC is not filed to obtain the orders of the Court to receive the documents. After settlement of the issues the documents are not produced by any of the parties to the suit. The witnesses need not file a petition under Order 13, Rule 2 CPC requesting the Court to receive the documents.

8. Reliance was placed on a judgment of the Supreme Court reported in Madanlal v. Shyamlal, 2002 (1) ALT 46, Certain documents were not produced before the Court at the relevant time before the settlement of the issues and till plaintiffs evidence was closed. Then the defendants filed a petition under Order 13, Rule 2 CPC requesting the trial Court to receive those documents. The trial Court rejected those applications. The High Court upheld the order of the trial Court.

The Supreme Court held that it cannot be said that the trial Court has acted with material irregularities in exercise of its jurisdiction in rejecting the applications filed by the appellant and that the order if allowed would occasion to failure of justice. As already noticed, witness need not file a petition under Order 13, Rule 2 CPC., before producing the documents in his possession. I have already pointed out that the witness is at liberty to produce the documents in support of oral evidence being given by him.

9. Another decision relied upon is a judgment of Madras High Court reported in Chinnasami Thanjiroyar Vs. Pichai Maricar, . In that case a witness was called to give evidence. His evidence disclosed that he was in possession of certain account books. The Court directed him to produce those accounts on the next date. The said witness did not produce the document before the Court on the next day. He did not appear before Court. Thereupon the Court imposed a fine of Rs. 50/- on the said witness. The said witness challenged the order of the trial Court imposing fine on him. The High Court considered the provisions under Order 16, Rule 10 of CPC and held that the Court has no power to impose fine on a witness if the witness fails to produce the document. Therefore, this decision has also no relevancy or application to the facts of the present case.

10. No prejudice is caused to the revision petitioners by the order of the trial Court marking the documents Exs.X1 and X2 inspite of the fact that the plaintiffs are not informed before hand that the witnesses are going to produce those documents. DW2 did not produce those documents. However, the defendants did not choose to cross-examine him. The cross-examination of DW3 who produced the documents Exs.X1 and X2 was also deferred. Therefore the plaintiffs are having sufficient opportunity to cross-examine DWs.2 and 3 effectively as they had taken adjournments to cross-examine DWs.2 and 3 later.

11. In view of these circumstances of the case, I do not find any ground to interfere with the order passed by the Court.

12. In the result the civil revision petition is dismissed. No costs.