
(1996) 09 AP CK 0056

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 138 of 1996

Peram Sambrajyam

APPELLANT

Vs

Thotakura Sambasiva Rao and Others

RESPONDENT

Date of Decision : 03-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2(1), 151

Citation : (1996) 4 ALD 574 : (1996) 4 ALT 435

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; P. Gangaiah Naidu, for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—This C.R.P. is directed against the order of the learned Additional Subordinate Judge, Tenali passed in O.S. No. 24/87 on 17-11-95. The petitioner before us is the original plaintiff. The question before us is whether the documents sought to be produced on record through D.W.2 could be allowed without the same having been referred to in the written statement and without bringing the same to the notice of the plaintiff before commencing the recording of oral evidence. The objection against production of documents taken on behalf of the plaintiff at the trial was over-ruled by the learned Subordinate Judge, and hence this revision.

2. The objection was taken by the plaintiff on the ground that the witness through whom the documents were sought to be produced were certified copies of sale deeds dated 16-3-83 and 20-10-89. The plaintiff took objection contending that the copies could not be received in evidence through a third party who was not a party to any of the aforesaid sale deeds, and secondly that without taking steps for production of originals, copies could not be received in evidence. The learned trial Judge observed in his impugned order that he did not agree with the contention of the learned Counsel for the plaintiff that the copies

could not be received in evidence. The learned Judge also did not find favour with the argument that the documents could not be allowed to be produced because the same did not directly relate to the suit transaction, and that they were only for the purpose of corroborative evidence. While allowing to be the production, the learned Judge observed that D.W. 2 was one of the attestors to one of the sale deeds, and therefore, he was the proper person by whom documents could be produced and marked, and at the same time, the learned Judge made it clear that the sanctity of the evidence of D.W.2 and the documents produced by him was a matter of argument and could be considered by the Court at the stage of arguments in the main suit

3. It is true that the documents could not be allowed to be produced by the defendants for the first time at the instance of the defendant's witnesses without mentioning any thing about such document either in the written statement or at any stage prior to the examination of witnesses by the rival parties. If the documents are so allowed to be produced at that stage, the plaintiff would be deprived of the opportunity of referring to such documents either during his own deposition or during the deposition of the witnesses examined on his behalf. However, in my opinion, this hurdle could be overcome by granting permission to the learned Counsel for the plaintiff to recall the plaintiff or his witnesses if any clarification is required to be made by them in respect of such documents. The second submission made on behalf of the plaintiff before the trial Court that the production could not be allowed also because none of the documents related to the suit transactions, but were sought to be produced only for the purpose of corroborative evidence, cannot also be lightly brushed aside. However, the defendants would be amply justified in producing the documents if it could be seen that even remotely the documents in question were good enough to render corroborative evidence to the contentions raised by the defendants.

4. It is true, as submitted by the learned Counsel for the petitioner that the documents should be produced with a list as also an application seeking permission of the Court to allow the documents to be produced at that stage and to make averments in the application for production as to how the defendants were justified in, producing the documents at that late stage. It is also true that the endorsement of the plaintiff's advocate should be obtained objecting to or not. objecting to such production, and that the trial Court should pass an order whether the production could be allowed at that stage or not after hearing the Parties. The learned Counsel for the petitioner before us, submitted that none of these requirements was fulfilled or complied with by the defendants, and therefore, the production itself could not have been allowed, let alone marking of the said documents. It however, appears that D.W.2 submitted an application dated 7-11-95 seeking permission of the Court to produce the documents. The record of the trial Court is not before me, however, the learned Counsel for the respondents produced xerox copy of application made by D.W.2 seeking production of those documents. The learned Counsel for the petitioner objected to the same by his memo dated 12-10-95. The application for production is

dated 7-11-95 and the objections memo filed by the learned advocate for the plaintiff is dated 12-10-95. Obviously, therefore, there is a discrepancy with regard to the date on which the application for production was made and the date on which the objections thereon were made by the learned advocate for the plaintiff. It is true, the plaintiff cannot be taken by surprise by producing the documents for the first time at the hands of D.W.2. However, in the interest of substantial justice, I believe that even at that late stage the production may be allowed subject to the right of the plaintiff either to re-examine himself or recall his witnesses for the purpose of throwing any light on the same as also simultaneously awarding exemplary costs in favour of the plaintiff and against the defendants.

5. It is one thing to allow or disallow the production of documents at this late stage, and altogether a different thing to admit such documents in evidence if the Court is satisfied with regard to the admissibility of such documents, either from the point of view whether original documents could be insisted upon or the certified copies or the xerox copies could be admitted in evidence. Therefore, even if this C.R.P. is rejected, only the production of documents could be allowed but not either the marking of the documents or admitting the same in evidence.

6. We are only concerned with the question whether the production could be allowed at this late stage. If it so allowed, the question whether the same could be admitted in evidence is again a matter of the trial Court Judge's discretion to admit the same in evidence. In *K. Sarath Babu v. K.D.V.P. Sangam*, 1985(2)An. W.R. 160 this High Court in para 8 observed that the mere marking of a document did not amount to its proof. The rest of the judgment deals with the question whether the circumstances under which the secondary evidence could be brought on record and established or not. This was precisely in the mind of this Court when the view was expressed earlier that the question whether the documents sought to be produced are admissible in evidence or not is not the subject matter of this revision petition, and by this order, this Court is not endeavouring to pass any order with regard to the admissibility of the documents in question.

7. The CPC provides for effect of non-production of documents. Under Order 13 Rule 2(1), it is provided that no documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of Rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing. It is true, that in the instant case, cause is not shown by the witness for producing the documents at the subsequent stage. However, I am of the opinion, that this is a fit case in which the Court should exercise its inherent powers as contemplated by Section 151 of C.P.C. to pass this order in the interest of justice by allowing exemplary costs in favour of the plaintiff.

8. In the above view of the matter therefore, subject to the question to be decided by the trial Court whether or not the documents sought to be produced could be admitted in evidence, the impugned order of the lower Court is upheld, which necessarily would mean that the C.R.P. deserves to be rejected.

9. Subject to the above clarification, the C.R.P. is dismissed. It is however, hereby ordered and directed that the concerned respondent who sought the documents to be produced shall pay a sum of Rs. 1,000/- by way of exemplary costs to the petitioner because of late production of documents, which may necessitate recalling the plaintiff and /or his witnesses if they are admitted in evidence. The respondent is directed to pay Rs. 1,000/- by way of costs to the petitioners within two weeks from the date of this order.