
(1996) 12 AP CK 0052
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3856 of 1996

Smt. P. Seethamma and Others

APPELLANT

Vs

P. Ramakrishna Reddy and Others

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, 115, 30

Citation : (1997) 1 ALT 322 : (1997) 1 APLJ 33 : (1997) 3 CivCC 442

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

Advocate : K.V. Satyanarayana, for the Appellant; P. Nagaraja Rao, for the Respondent

Final Decision : Allowed

Judgement

P. Ramakrishnam Raju, J.—This revision is filed by the plaintiffs questioning the order passed under Order 11 Rule 1 CPC refusing leave to the petitioners to serve interrogatories on the respondents.

2. The suit is filed for partition and separate possession which is based on the will executed by Utukuru Yellamma on 10-8-1960 in favour of the first plaintiff's husband. The respondents are contesting the suit. Evidence was also recorded by both sides and the suit was posted for arguments. At that stage, the petitioners filed the application on the ground that they came to know that the fourth respondent executed a registered will dt.1-3-1987 which contains a declaration that she inherited the property from her foster mother Utukuru Yellamma. The lower Court dismissed the said application. Hence this revision.

3. Sri K.V. Satyanarayana, the learned counsel for the petitioners submits that since the petitioners had no opportunity to know about the execution of the registered will by the fourth respondent, they could not file the interrogatories earlier and the lower Court should have allowed the said application in the interest of justice in view of Section 30 CPC. Sri P. Nagaraja Rao, the learned

counsel for the respondents on the other hand contends that the impugned order passed by the lower Court is not a case decided and as such has taken a preliminary objection that the C.R.P. is not maintainable. He places reliance on the decision of the Mysore High Court in Venkateswara Rao v. K. Nagamma AIR 1972 Mys 254 and the decision of the High Court of Allahabad in Smt. Madhubala Vs. Smt. Budhiya and Another, . These two decisions were rendered prior to the amendment of Section 151 (sic. 115) CPC in the year 1976. After the amendment in the year 1976, a substantial change has been brought about in Section 151 (sic. 115) and therefore, these two decisions, in my view, cannot be followed.

4. A reading of Section 30 CPC shows that the Court has got power to order discovery or permit interrogatories at any time. Order 11 Rule 1 CPC contemplates service of interrogatories on the opposite party with the leave of the Court. A conjoint reading of these two provisions make it clear that the Court can at any stage allow service of interrogatories in its discretion. But, at the same time, the discretion must be exercised in a judicious way. The information sought to be furnished must have some nexus or relevancy with the dispute in question. A Division Bench of the Punjab and Haryana High Court in Harcharan Singh Vs. State of Punjab and Others, observed that "Section 151 CPC is the reservoir of that power where under inherent powers can be, exercised by the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Obviously, in order to exercise inherent powers, facts and circumstances of each case would have to be seen by the Court if it comes to the view that a person purposely, contumaciously and maliciously was withholding documents required to be produced by it. I see no reason why the Civil Court in that situation to further the object of Sections 30 and 32, CPC exercise the inherent powers u/s 151 of the said Code."

5. It is needless to say that under the guise of these powers, it cannot be permitted to have a roving or fishing enquiry in respect of matters which are not relevant for the purpose of the suit. It is also pertinent to note that all questions which are relevant for cross-examining the witness may not be also relevant for the purpose of interrogatories. Bearing these principles in view, the question whether the petitioners should be permitted to serve the interrogatories in this case has to be examined.

6. The two interrogatories which are sought to be served are whether the fourth respondent has executed a registered will declaring that the land covered by the will originally belonged to Utukuru Yellamma and whether the first respondent has attested the will?

7. As already pointed out by Sr. K.V. Satyanarayana the learned counsel for the petitioners, the alleged registered will executed by the fourth respondent cannot be disclosed to others during the life time of the fourth respondent. Therefore, there is no opportunity for the petitioners to obtain a certified copy and prove the said declaration contained in the said will. As such, the only way of establishing

the said fact is by serving the interrogatories.

8. Sri Nagaraja Rao, the learned Counsel for the respondents, however, relying on the decision of the Delhi High Court in *Rajasthan Golden Transport Co. Pvt. Ltd. v. Avon F.I. Pvt. Ltd.* AIR 1984 Delhi 286 submits that a recital in the document cannot be the subject matter of an interrogatory and the power to permit the interrogatories is in the discretion of the Court. When the interrogatories which do not relate to any of the matters in dispute in the suit, the Court shall not permit the said interrogatories as they would be irrelevant although the same might be admissible for cross-examination of a witness. He also submits that even after the amendment of Section 151 (sic. 115) CPC in the year 1976, no revision lies against an order refusing to permit interrogatories. A similar question has come up before this Court in *K. Subbanaidu v. G. Subbaiah* 1992 (1) ALT 291 wherein a learned single Judge of this Court observed as under:

"Thus, even before the amendment of Section 115 CPC in 1976, the expression "case" was construed as including" a part of proceeding whereby the High Court in exercise of the power of superintendence interfere in such matters. It is now made specific by the Explanation to Section 115 CPC after it was amended by Amendment Act, 1976."

Therefore, following this judgment, I have no hesitation to come to the conclusion that the revision petition is maintainable. In *Raj Narain Vs. Indira Nehru Gandhi and Another*, . The Supreme Court observed, "The only questions that are relevant as interrogatories are those relating to any matters in question". The interrogatories served must have reasonably close connection with "matters in question".

9. As already seen, any party can be served with interrogatories which are relevant and in (sic with) the matter under controversy. The nature of the property in dispute is one of the issues for consideration before the lower Court. Therefore, in my view, the service of interrogatories on the fourth Respondent cannot be said to be irrelevant or unconnected with the matter in question. As already stated, u/s 30 CPC the interrogatories can be served at any time. In this case, the execution of the registered Will cannot be a matter of notice to the public during the life time of the fourth respondent. As such, the only way to find out the truth is only by service of interrogatories. Under these circumstances, I am of the view that the lower Court has erred in dismissing the said application without considering the relevant aspect of the matter and failed to take into consideration the relevant provisions of law while disposing of the matter. Accordingly, the order of the lower Court is set aside and the revision petition is allowed. But, in the circumstances, without costs.