

(1957) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1272 of 1955

Sundaramudi China Lakshmayyd

APPELLANT

Vs

K. Suryanarayana

RESPONDENT

Date of Decision : 16-07-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 16, Order 18 Rule 4, 115(c)C, 15
Evidence Act, 1872 — Section 135, 45

Citation : AIR 1958 AP 254

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : M.S. Ramachandra Rao and M. Krishna Rao, for the Appellant; Valluri Parthasarathi, for the Respondent

Judgement

Umamaheswaram, J.—This Civil Revision Petition raises an important question of law as to the scope of Order 18 Rule 4, C.P.C. In order to appreciate the contention of Sri M. Krishna Rao, the learned advocate for the petitioner, it is necessary to set out a few relevant facts.

2. The petitioner herein filed I.A. No. 92 of 1955 for sending the receipt dated 10-2-1954 to Hand-Writing Expert. The learned District Munsif dismissed the application on the ground that an Expert had already given an opinion that the signature in the document was that of the defendant. The plaintiff thereupon filed an application u/s 151 C.P.C., to allow him (sic) take photographs from the negatives of the disputed and the admitted documents in court (sic) enable him to send them to a Hand-Writing Expert.

The application was also dismissed by the Learned District Munsif. When the suit was taken up for trial, the plaintiff brought an expert to Court and wanted to examine him. The learned District Munsif refused to grant him permission to examine the Expert by reason of an application filed by the respondent not to examine him. It is against that order that the plaintiff has filed the present

Civil Revision Petition to this Court.

3. The main question that arises for consideration in the Civil Revision Petition is whether it is open to the Court to refuse to examine witness summoned or brought to the Court by party. The only relevant, provision is Order Rule 4 C.P.C., which runs in the following terms:

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and s(sic) perintendence of the Judge.

4. Section 135 of the Indian Evidence A merely provides the order in which the witness should be produced and examined. It enacts the order shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively and in the absence any such law, by the discretion of the. Court. T. learned advocate for the respondent has not be able to draw my attention to any provision law which confers power on the Court to sh(sic) out the examination of witnesses produced a(sic) sought to be examined by any party. Reference was made to the provisions of Order 16 Rule C.P.C., as throwing light on the scope of O.R. 4 C.P.C. Order 16 R. 1 C.P.C., provides that at a time after the suit is instituted, the parties m obtain, on application to the Court or to such Officer as it appoints in this behalf, summonses persons whose attendance is required either give evidence of to produce documents. In c(sic) struing the provisions Of the Order 16 R.I.C.C, the Calcutta High Court held in Aswini Kumar Bhandari Vs. Anukul Chandra Bhandari and Others, that a party is entitled as of right to a summ(sic) so long as the application is made after the institution of the suit and before it is decided.

In an earlier Calcutta decision reported Abdul Bari Dewan and Others Vs. Hrishikesh Mittra and Others,), it was held that the function of a Civil Court in issuing summons is akin that of a post office and it has no power to fuse the issue of summons. The Patna High Co has followed the Calcutta decision in Tara Prasanna Gupta Vs. Jhaman Ram and Others, I am, however, not prepared to take the entree view propounded in those cases. As pointed (sic) in Veerabadran Chetty v. Nataraja Desikar, AIR 28 Mad 28 (D). there is always an inherent (sic)wer vested in the Court to control the issue summons or the examination of the witness ibramania Ayyar, J., followed the view of Jessel, (sic). in Raymond v. Tapson, (1882) 22 Ch. D 430 p. 434 (E). The passage relied on is as follows: Of course there was always a power in the (sic)urt to prevent an abuse of this power (of sunt. Ming witnesses)

(sic)ter referring to Rex v. Burbage, (1763) 3 Burr (sic)10 (P), Subrahmania Ayyar, J., pointed out as follows:

It is hardly necessary to point out that the control in question is an instance of the general (sic)hority of every Court of competent jurisdiction to prevent abuse of its process, an authority (sic)rmed by the Judicial Committee in Haggard v. (sic)icier Freres, (1892) 2 AC 61 (G), cited by Mr. (sic)nivasa Ayyangar.

5. I am therefore inclined to hold that the (sic)rt should normally issue summons and exa-(sic)e the witnesses produced before Court and (sic)t this power is subject to the inherent right avoid abuse of process,

6. I shall now examine whether the Court (sic)w acted rightly in refusing to examine the (sic)d Writing Expert summoned for and produ. before Court by the plaintiff. The reason (sic)n by the learned District Munsif for allowed the application of the respondent is that the prior applications filed by the plaintiff were (sic)issed. I am unable to see how the plaintiff (sic)ot entitled to have the Hand-Writing Expert (sic)nined merely by reason of dismissal of those (sic)cations.

7. Sri Valluri Parthasarathi strenuously conserved that as the evidence of the hand-writing part is only in the nature of an opinion, there (sic)obligation on the part of the Court to per-(sic) the hand-writing expert to be examined. I unable to see how the mere fact that his evi-(sic) is in the nature of an opinion makes any (sic)ence. Section 45 Of the Evidence Act makes opinion relevant. So the parties are entitled amine the Experts in proof of their respect contentions.

8. The last objection taken by Sri Partha-(sic)i was that I ought not to interfere with an refusing to examine a witness under Sec-.15 C.P.C. The exclusion of evidence, in opinion, is revisable u/s 115 (c) C., as held by me in Karri Venkata Narasayamma and Another Vs. Pentapati Venkata Rattamma and Another)nd Nori srirama Sastri Vs. Nori Lakshmiddevamma and Others In the result, I allow the Civil Revision (sic)n and set aside the order of the Court and hold that the plaintiff if entitled to be the Hand-Writing Expert, if produced (sic)rt. The petitioner will be entitled to his (sic).