
(2006) 02 AP CK 0001
In the Andhra Pradesh High Court
Case No : CRP No. 6780 of 2005

T. Padma

APPELLANT

Vs

Anreddy Sai Reddy and Others

RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 2, Order 12 Rule 4, Order 12 Rule 8
Evidence Act, 1872 — Section 65, 66, 66(3)

Citation : (2006) 3 ALD 71 : (2006) 3 ALT 409

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

Bench : Single Bench

Advocate : C.A.R. Seshagiri Rao, for the Appellant;

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri C.A.R. Seshagiri Rao, the learned Counsel for the revision petitioner. Respondents were served and none represents the respondents.

2. This Court, ordered notice before admission on 22-12-2005 and granted interim stay, which was in fact extended even subsequent thereto.

3. Sri C.A.R. Seshagiri Rao, the learned Counsel representing the revision petitioner would contend that in the light of the facts and circumstances of the case, which had been pleaded in the plaint, the issuance of notice to the opposite party for production of original document in question may not arise. The learned Counsel specifically pointed out to the relevant paras in the plaint at paras-6 and 7 and would maintain that in the light of the proviso to Sub-section 3 of Section 66 of the Indian Evidence Act, 1872 (for short "the Act"), such notice may not be necessary and in the light of said provision, the applicability or otherwise of Order XII Rule 2 of CPC needs no serious consideration.

4. The revision petitioner-plaintiff in O.S. No. 39 of 2004 on the file of Senior Civil Judge, Jangaon, filed LA. No. 254 of 2005 seeking permission of the Court

to lead secondary evidence in respect of agreement of sale dated 4-7-2004 executed by the respondents/defendants in her favour in relation to the plaint schedule property. The revision petitioner-plaintiff filed the suit for specific performance of the aforesaid agreement of sale. Several details relating to the transactions had been narrated in the affidavit filed in support of the application. It was also stated that the original agreement of sale and the receipt in original are in the custody of the respondents and she is in possession of Xerox copies, which are filed into Court. It was also stated that she is advised that inasmuch as the originals are in the custody of the respondents, she may pray for permission to lead secondary evidence. The learned Judge, in the light of the provisions of Sections 65 and 66 of the Act and also Order XII Rules 2, 4 and 8 of CPC, arrived at a conclusion that the issuance of notice for production of original documents to the opposite party being mandatory, the relief prayed by the revision petitioner cannot be granted.

5. On a careful scrutiny of the averments, made in the plaint in general, and paras-6 and 7 in particular, the specific stand taken by the petitioner-plaintiff is that on some representations were made by the defendants and believing the same, the originals had been delivered to the opposite parties. Several factual details in relation thereto had been narrated. It is no doubt true that the truth or otherwise of the allegations may have to be gone into at the appropriate stage.

6. The proviso in Sub-section 3 of Section 66 of the Act reads as under:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it...when it appears or is proved that the adverse party has obtained possession of the original by fraud or force.

7. Strong reliance was placed on the words "when it appears or is proved", the word "appears" would assume some importance. It is no doubt true that the word "appears" is something different from the word "proved".

8. In the light of the averments made in paras-6 and 7 of the plaint, prima facie, it appears that the plea of fraud had been averred and hence in view of the said provision though the former portion of Sections 65 and 66 of the aforesaid Act do contemplate issuance of notice to the opposite party for production of originals, the rigour of these provisions need not be applied to a case of this nature. Apart from this aspect of the matter, the other provisions which had been referred to by the learned Judge Order XII Rules 2, 4 and 8 of CPC, it is needless to say that these are all procedural provisions. In the light of the proviso to Sub-section (3) of Section 66 of the Act which had been referred to supra, this Court is of the considered opinion that the rejection of the application on the ground of want of prior notice to the adverse parties for production of originals, cannot be sustained. Accordingly, the impugned order is hereby set aside and the revision petitioner is permitted to lead secondary evidence as prayed for.

9. The civil revision petition is hereby allowed accordingly. No costs.