

(2006) 08 AP CK 0046

In the Andhra Pradesh High Court

Case No : CRP No"s. 1227 and 1260 of 2006

T. Srinivasa Rao

APPELLANT

Vs

T. Venkata Rangaiah and Another

RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 3A, Order 18 Rule 4

Citation : AIR 2007 AP 1 : (2006) 5 ALD 823 : (2006) 5 ALT 683 : (2006) 3 APLJ 171

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Narayana Reddy, for the Appellant; S. Balchand, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The 1st respondent filed O.S. No. 231 of 2002 in the Court of DC Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad, against his brother, the petitioner herein, and their mother, the 2nd respondent, for the relief of partition and separate possession of the suit schedule property. The trial of the suit commenced. The 1st respondent filed an affidavit, in lieu of chief-examination as PW-1, and filed Exs.A-1 to A-19 as documents. An Advocate-Commissioner was appointed to record his cross-examination. On behalf of the 1st respondent herein, it was urged that a compromise had emerged between the parties and the cross-examination of PW-1 must be restricted only to the contents and outcome of such compromise, and not to other aspects. The petitioner objected to the same. The trial Court overruled the objection and accepted the contention of the 1st respondent herein, through its order dated 9-1-2006. C.R.P. No. 1227 of 2006 is filed against the said order.

2. The 1st respondent has also filed I.A. No. 490 of 2005 under Order 12 Rule 3A C.P.C., with a prayer to record the admission of the petitioner and the 2nd

respondent herein, about the documents said to have been signed on 4-7-2005. It was alleged that a settlement, in relation to the suit schedule property has been arrived at, and that the same was reduced into writing. The petitioner filed a counter-affidavit stating that though an effort was made in the direction of bringing about a settlement, it did not fructify. It was urged that the documents relied upon by the 1st respondent were kept with a common friend and elderly person, with a specific understanding that the same can be delivered to the parties only after the settlement is finalised, and contrary to the same, the said elderly man colluded with the 1st respondent, and gave the documents to the latter, by playing fraud. The trial Court allowed the I.A., through a separate order dated 16-9-2005. C.R.P. No. 1260 of 2006 is filed against the said order.

3. Sri B. Narayana Reddy, learned Counsel for the petitioner submits that the trial Court had deviated from the settled procedure in the adjudication of the suit, and the orders passed by it, have the effect of putting premium on the fraud played by the 1st respondent. He contends that the Court could have taken notice of only such settlement, as was arrived at between the parties, and there was no justification on its part, in acting upon the one-sided version, put forward, by the 1st respondent.

4. Sri S. Balchand, learned Counsel for the 1st respondent, on the other hand, submits that the effort of his client was, only to apprise the Court, of the developments, that have taken place subsequent to the filing of the suit. He contends that when the petitioner himself agreed for a particular course of action, for resolving the disputes between himself and the 1st respondent, he was not entitled to resile from the same.

5. The 1st respondent filed the suit for partition against his mother and brother, the petitioner herein. The nature and contents of the pleadings, by the respective parties, is not before this Court. Obviously, because there was triable issue in the matter, the trial Court proceeded with the recording of evidence. The 1st respondent filed an affidavit, in lieu of chief-examination. He has also filed certain documents. The record discloses that the 1st respondent is just 42 years old, hale and healthy. Even then, the trial Court had chosen to appoint a Commissioner to record his cross-examination. The interesting part of the matter is that the respondents did not apply for appointment of Commissioner. The amendment made to Rule 4 of Order 18 C.P.C., providing for appointment of Commissioners, for recording of cross-examination, was resorted to, almost as a matter of course. Obviously, taking advantage of the fact that the cross-examination was being recorded by the Commissioner, the 1st respondent started dictating terms, as to what questions should be put to him, and what not. When the matter reached the trial Court, seeking necessary directions for the Commissioner, it approved the cross-examination indicated on behalf of the 1st respondent.

6. Time and again, this Court cautioned the trial Courts, not to appoint Commissioners, for recording cross-examination of a witness, as a matter of

course. The effect of permitting the witnesses to file affidavits in lieu of chief-examination, resulting in denial of opportunity to the Courts, to appreciate and assess the demeanor of witnesses; was pointed out. In fact, amendment of Order 18 Rule 4 C.P.C., to the effect that the only mode of chief-examination shall be through filing of affidavits, had its own implications, on the adjudication of the suit, notwithstanding the time it has saved, for the Courts in the process. Be that as it may, the Parliament did not intend appointment of Commissioners for recording of cross-examination, as a matter of course. The question as to whether recourse should be had to, such a measure; would depend upon the pressure of work in the Court, the condition of witness, i.e., the difficulty for him to appear before the Court, the nature of questions that may crop up during cross-examination, such as, the occasion to overrule to sustain any objections, determination as to the admissibility and relevancy of documents etc.

7. Appointment of Commissioners to record the cross-examination of an otherwise able witness, is prone to weaken the very adjudicatory process, and it would naturally tell upon the quality of adjudication. The tendency, which would encourage the Courts, to avoid one after the other facets of adjudication, is likely to increase. The logical extension of such a course would be, to search for devices, excuses, or shortcuts, for disposal of the suits, without actually examining the issues, appreciating the evidence or undertaking discussion. Each and every step in the adjudicatory process has its own impact on the ultimate outcome. It must not be forgotten that adjudication by Courts is respected, on account of the various stages involved in it, and with the deletion of one or more of such steps, the credibility of the entire system would receive a dent.

8. The fact that as many as 19 documents filed by the 1st respondent along with the affidavit, in lieu of chief-examination; ought to have persuaded the Court, to take the trouble of recording the cross-examination in the Court itself. The reason is that several questions, relating to the admissibility and relevance of such documents would crop up. The 1st respondent intended to take full advantage of the appointment of Commissioner for cross-examination. Obviously, he was not before the Court, he went on indicating the manner, in which he must be cross-examined. He did not stop there. He wanted to compel the petitioner herein, to answer certain queries, notwithstanding the objections raised by the petitioner, as to fraud played upon him, by the 1st respondent and the elderly person.

9. In a suit for partition, particularly, in the context of passing a preliminary decree, only two questions assume importance, viz., ascertainment of the properties that are available for partition, and determination of the shares of the respective parties. If the defendant pleads a prior partition, or that some of the properties, indicated in plaintiff schedule, are not available for partition, the burden would be upon him, to substantiate it. If the plaintiff is of the view, that any development has taken place, bringing about partition, subsequent to the filing of the suit; he has to enforce his rights under a separate set of proceedings.

10. In the instant case, the 1st respondent pleaded that during the pendency of the suit, the matter was referred to a mediator, and that a settlement has been brought about. Any settlement between the parties to a suit, arrived at during the pendency of the suit, can assume finality, if only an application is filed under Order 23 C.P.C. Till the Court records such a compromise, any amount of agreement between the parties, or acknowledgement of the steps, cannot effect the rights of the parties. At the most, the parties, who resile from such steps, in the direction of a settlement, can be subjected to cross-examination.

11. The 1st respondent came forward with a peculiar plea in the instant suit. According to him, the petitioner is not entitled to put any questions to him, except the one, relating to the so-called settlement. Unfortunately, the trial Court approved, of such a course, little realizing that the scope of cross-examination cannot be determined by a witness, who is being examined. If, according to the 1st respondent, the complexion of the suit has undergone a change, on account of the developments, that have taken place during the pendency of the suit, he ought to have either amended the plaint, or withdrawn the suit and initiated proceedings for enforcement of the so-called settlement.

12. The application filed by the 1st respondent, under Rule 12, is another facet of the exercise, undertaken by him, to pin-down the 1st respondent herein to certain, specific aspects and to deprive him from raising other defences.

13. This Court is of the view that the trial Court ought not to have entertained such objections, or requests, as the case may be. In fact, the trial Court ought not to have appointed a Commissioner for recording of evidence of such a hale and healthy witness, particularly, when the relevance and admissibility of several documents was involved.

14. For the foregoing reasons, the C.R.Ps. are allowed, and the orders under revision are set aside. The trial Court is directed to continue the cross-examination of PW-1 in the Court itself, and it shall not restrict the scope of cross-examination, except to the extent provided for, under the Indian Evidence Act. It shall however, be open to the respondents, to confront the petitioner herein with all such developments, when the petitioner deposes as a witness.

15. There shall be no order as to costs.