
(1995) 12 AP CK 0021

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4158 of 1993

Tadakamadla Mallaiah and Others

APPELLANT

Vs

Gadegoni Narsaiah and Others

RESPONDENT

Date of Decision : 21-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, Order 22 Rule 4

Citation : (1996) 2 ALD 512 : (1996) 2 ALT 17

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : Raja Malla Reddy, for the Appellant; None appeared, for the Respondent

Final Decision : Allowed

Judgement

K.B. Siddappa, J.—This revision is filed against the order dated 28-9-1993 passed by the learned District Munsif, Siddipet in O.S.No. 84 of 1988.

2. Pending the suit the 2nd defendant died on 16-1-1993. The legal representatives of the 2nd defendant were added as defendants in the suit. The 2nd defendant and others filed their written statements. After framing the issues trial was commenced and the same was closed. At the stage when the suit was posted for arguments, it seems that the court gave an opportunity to defendants 10 to 16, who are added as the legal representatives of the 2nd defendant, for filing the written statement. It appears that they have also filed the written statement. They contended that the plaintiff is not the owner of the property in Sy.No. 155.8 and had no title for the same etc. On the basis of that P.W.1 was again recalled and cross-examined in pursuance of the additional written statement filed by defendants 10 to 16 putting forth all the unnecessary facts which are not covered by the written statement filed by the 2nd defendant in the suit.

3. The learned counsel for the revision petitioner submitted that the suit was

posted for arguments. At that stage the court suo motu cannot give an opportunity to defendants 10 to 16 to file supplementary written statement. As a matter of fact there is no petition from them to reopen the matter and to file additional written statement. Therefore, in such circumstances, the court below is not justified in recalling P.W.1 for the purpose of cross-examination on the basis of the written statement now filed by defendants 10 to 16. Hence the order under revision cannot be sustained.

4. I entirely agree with the submission made by the learned counsel for the petitioners. It is not the case that defendants 10 to 16 filed a petition for reopening the suit for further trial nor there is any petition from them praying the court for filing the supplementary written statement. In such a case the court has no power to reopen the matter suo motu and also has no power to give an opportunity to them to file supplementary written statement. The procedure adopted by the court below is wholly irregular.

5. The order under revision is set aside and the C.R.P. is allowed. No costs.

6. The lower court is directed to proceed with the trial of the suit on the basis of the written statement filed by the 2nd defendant.