
(2012) 10 AP CK 0060
In the Andhra Pradesh High Court
Case No : CRP No. 6335 of 2009

Talasila Suresh

APPELLANT

Vs

Naarla Srinivasa Chakravarthi and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Evidence Act, 1872 — Section 33

Citation : AIR 2013 AP 98 : (2013) 1 ALD 599 : (2013) 4 ALT 192

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Sai Gangadhar Chamarty, for the Appellant;

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The 1st respondent filed OS No. 381 of 2003 in the Court of the Principal Junior Civil Judge, Avanigadda, against the petitioner and respondents 2 to 4 for recovery of amount on the strength of a promissory note, said to have been executed by late Rama Mohana Rao, the father of the petitioner, The suit was decreed and after the decree became final, the 1st respondent filed EP No. 107 of 2007 against the petitioner and respondent No. 2, his mother, and respondents 3 and 4, his sisters. In the course of trial of the E.P., the 1st respondent wanted to mark the deposition of the petitioner herein in OS No. 60 of 2003 on the file of the Court of Senior Civil Judge, Avanigadda. The petitioner raised an objection to it by making reference to Section 33 of the Indian Evidence Act (for short, "the Act"). The executing Court, however, overruled the objection through its order, dated 24.11.2009, and directed that the deposition of the petitioner in the said suit, be marked as an exhibit. The same is challenged in this revision. Heard learned Counsel for the petitioner and learned Counsel for the respondents.

2. The only question that arises for consideration is as to whether the deposition of the petitioner herein, as a witness in OS No. 60 of 2003 can be taken on record, as an exhibit in EP No. 107 of 2007 filed by the 1st respondent.

3. Section 33 of the Act deals with this aspect. The executing Court has extracted the provision and has undertaken discussion with reference to it. The evidence given by a witness in a judicial proceeding, is treated as relevant, for the purpose of proving the truth of the facts stated in subsequent judicial proceedings, subject to certain conditions. Such facility is available, (a) when a witness is dead or (b) cannot be found or (c) is incapable of giving evidence or (d) is kept out of reach, by the adverse party or (e) his presence cannot be obtained without an amount of delay or expense. Even if one of these circumstances exist, it must be ensured that the proceedings are (a) between the same parties or their representatives in interest and the questions in issue are substantially the same in both the proceedings and (b) the adverse party in the first proceeding had the right and opportunity to cross-examine the witness. When such are the conditions imposed by the Legislature in the context of placing reliance on evidence of a witness, given in an earlier set of proceedings, heavy burden rested upon the 1st respondent to establish each of these facets.

4. In the instant case, what is sought to be marked is the deposition of the petitioner, in OS No. 60 of 2003. He is very much alive, and available to be examined and cross-examined. Therefore, the conditions incorporated in Section 33 of the Act, themselves bar the marking of the deposition of the petitioner recorded in another suit. Added to that the 1st respondent failed to establish any of the conditions stipulated in the provision, which are independent of each other.

5. The trial Court relied upon the judgment of the Calcutta Court in *Dukhiram Dey Vs. Mrityunjoy Prosad Daw and Others*, That was a case in which the witness was confronted with a statement made by him in another suit. Confronting a witness with a statement is substantially different from marking the entire deposition, and making it part of the record in another case.

6. Hence, the civil revision petition is allowed and the impugned order is set aside. There shall be no order as to costs. The miscellaneous petition filed in this civil revision petition shall stand disposed of.