
(2007) 02 AP CK 0065

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 722 of 2007

Thimmaraju Shyama Sunder Rao and Another

APPELLANT

Vs

Thimmaraju Jittender Rao and Others

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1

Citation : (2007) 4 ALD 20 : (2007) 3 ALT 378

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

Bench : Single Bench

Advocate : P. Hari Prasad, for the Appellant; Gadi Praveen Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri P. Hari Prasad, the learned Counsel representing Revision Petitioners and Sri G. Praveen Kumar, the learned Counsel representing the first respondent.

2. The second and third respondents in the Civil Revision Petition are defendant Nos. 3 and 4 in the suit. The Revision Petitioners/ Defendant Nos. 1 and 2 in O.S. No. 66 of 2003 on the file of III Additional Senior Civil Judge (Fast Track Court), Warangal, filed an application in I.A. No. 268 of 2006 under Order XVI Rule 1 of the CPC (hereinafter in short referred to as "Code"), to summon Sri T. Manohar Rao as a witness on their behalf.

3. It is stated by the petitioners that the matter is coming up for further evidence on their behalf, and the suit house and also the joint family properties were partitioned among their brothers long back and to speak about the partition and the family arrangements, the presence of Sri T. Manohar Rao is very much required.

4. The said allegation was resisted on the ground that the proposed witness is a good old man aged about 82 years, and only with a view to harass him, this

application had been thought of at a belated stage. It is stated by the counsel on record that written arguments also had been submitted and at that stage, meanwhile, this Civil Revision Petition was preferred as against the impugned order.

5. The learned Counsel representing the Revision Petitioners placed reliance on Addagatla Narendar Vs. Some Vijayalakshmi, and would contend that a liberal approach to be adopted to do substantial justice and permitting admissible evidence to be taken as a general rule.

6. The learned Counsel representing the first respondent placed strong reliance on B. Venkat Ram Reddy Vs. K. Srinivas and Others, and would submit that unless the party, who intends to summon, pleads specifically the context in which the witnesses are to be examined, they cannot be summoned.

7. There cannot be any doubt whatsoever, normally, the procedural technicalities should not defeat the substantial justice and liberal approach to be adopted to do substantial justice and permitting of admissible evidence is the general rule. This view was expressed by this Court in the above referred Addagatla Narendar Vs. Some Vijayalakshmi, This Court also expressed the view in the above referred B. Venkat Ram Reddy Vs. K. Srinivas and Others, that unless the party, who intends to summon, pleads specifically the context in which the witnesses are to be examined, they cannot be summoned, and except stating that they are to be examined to elicit real facts, no other purpose had been stated and witnesses cannot be summoned on such general and vague requests. When the suit was coming up for further evidence of the defendants, this application was filed to summon a good old man, who is said to be of an age of 82 or 83 years. The suit is for damages and the stand taken is that to speak on the aspect of partition, it is necessary to examine the witness. When the relief is prayed for summoning the witnesses and if just reasons are explained, normally, the Courts are expected to permit adducing such evidence. But, here is a case where an application was moved at a belated stage, that too, for the purpose which may not help either of the parties. When the Court is satisfied about the irrelevancy of the evidence sought to be adduced by summoning the witnesses, the Court will definitely exercise the discretion of negating such relief prayed for.

8. In the light of the reasons recorded by the learned Judge, this Court is satisfied that the learned Judge exercised the discretion properly while negating the relief. Hence, this Court does not seek any legal infirmity whatsoever to interfere with the impugned order.

9. Accordingly, the Civil Revision Petition shall stand dismissed. No order as to costs.