
(2008) 06 AP CK 0040
In the Andhra Pradesh High Court
Case No : CRP No. 2204 of 2008

T.S. Benarjee and Others

APPELLANT

Vs

Jannu Ruthamma and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Citation : (2008) 5 ALD 107 : (2008) 4 ALT 786

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Sabbineni Venugopal, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Respondents 1 to 4 filed O.S. No. 53 of 2000 in the Court of Principal Senior Civil Judge, Warangal, against respondents 5 to 9 and the petitioners herein, for the relief of partition and separate possession of the suit schedule property. During the pendency of the suit, some of the defendants died, and their legal representatives were brought on record. The petitioners were impleaded in the suit as defendants 8 to 12, through orders of the Trial Court in I.A. No. 1009 of 2003, as subsequent purchasers.

2. The trial of the suit commenced, and the evidence on behalf of the respondents 1 to 4 (plaintiffs), was concluded. The affidavits, in lieu of chief-examination of some of the defendants, including the petitioners, were filed. The petitioners herein were cross-examined on 4.4.2008, on behalf of some of the defendants. Their cross-examination on behalf of the plaintiffs was due. On 25.4.2008, Counsel for the respondents 1 to 4 (plaintiffs), requested the trial Court to permit them to cross-examine the petitioners herein, only after DWs.6 and 7 are cross-examined by the supporting defendants. Petitioners opposed the said request. The trial Court passed a detailed docket order dated 25.4.2008, noting the contentions of the respective parties, and ultimately directing that the petitioners herein shall be cross-examined by the plaintiffs, after defendants 6

and 7 are cross-examined by the other supporting defendants. The said order is challenged in this C.R.P.

3. Heard the learned Counsel for the petitioners.

4. The subject-matter of the suit had assumed complications, on account of the fact that large number of parties came to be added during the course of time, and while some defendants sailed with the plaintiffs, others opposed the suit. The petitioners herein were added as defendants, at a later stage, on the ground that they have purchased part of the suit schedule property, after institution of the suit. The recording of evidence, on behalf of the plaintiffs, was concluded.

5. Left to themselves, the respondents 1 to 4 did not have any cause of action, or grievance, vis-a-vis the petitioners. Such of the defendants, who are opposing the suit claim, are required to adduce their evidence first. Any persons, claiming through the original defendants, and came to be added subsequently, have to depose later. This would accord with the priority in which the parties are arrayed, and ensure consistency as to the plea taken by the respective parties.

6. Before the C.P.C. came to be amended through Act 22 of 2002, the Courts did not find much difficulty in identifying the priority of the witnesses and recording of their evidence, one after the other. With the replacement of the chief-examination of the parties, with the filing of affidavits of the witnesses, the priority now comes to be decided only at the time of cross-examination of the witnesses.

7. Obviously, on account of the fact that large number of witnesses have filed their affidavits, in lieu of chief-examination, the trial Court appears to have permitted the cross-examination of the petitioners herein i.e. defendants 8 to 12, firstly, by the defendants, who are supporting their claim. If the respondents 1 to 4 i.e., plaintiffs are required to cross-examine these witnesses, the actual contesting witnesses, viz., defendants, who are identified as DWs.6 and 7 would be in a position to fill the lacunae, if any.

In view of this fact, the Counsel for the respondents 1 to 4 rightly insisted that, he will proceed to cross-examine the petitioners herein, only after DWs.6 and 7 are cross-examined by the other supporting defendants. It cannot be said that the petitioners are subjected to any hardship, or that they have any genuine grievance.

8. The trial Court had assigned valid reasons, in support of the view, which it has taken. This Court is not inclined to interfere with the same.

9. The CRP is accordingly dismissed. There shall be no order as to costs.