
(2010) 02 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5585 of 2009

Vattikonda V. Anantharama Rao

APPELLANT

Vs

Voruganti Narayana Rao

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 137, 138, 154

Citation : (2010) 2 ALT 641 : (2010) 4 CivCC 842

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : V. Brahmaiah Chowdary, for the Appellant; V. Raghu, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—Aggrieved by the order dated 26-10-2009 passed in O.S. No. 52 of 2003 on the file of Junior Civil Judge, Kodad, the defendant has filed this revision under Article 227 of the Constitution of India.

2. Voruganti Narayana Rao, the plaintiff filed the suit against Vattikonda V. Anantharama Rao, the defendant, for eviction and damages. The defendant resisted the suit by filing written statement. The plea of the defendant is that he purchased the suit schedule property under an agreement of sale from Para Seethaiah and he issued notice to Seethaiah to execute a registered sale deed pursuant to the agreement of sale. The trial Court settled the issues and the plaintiff adduced evidence on his behalf. The defendant commenced evidence on his behalf. He filed I.A. No. 55 of 2007 to summon his vendor-P. Seethaiah for cross-examination. The trial Court, allowed the application, by order dated 5-12-2007. The plaintiff assailed the order dated 5-12-2007 by filing C.R.P. No. 5855 of 2007. The said C.R.P. came to be allowed on 29-4-2008.

The relevant portion of the order passed in the said C.R.P. reads as hereunder:

It is too elementary to restate that without there being any chief-examination, a witness cannot be subjected to cross-examination directly and the relevant provisions are under Sections 137 and 138 of the Indian Evidence Act. A perusal of Section 154 of the Act goes to show that the Court may, in its discretion, permit the person who calls a witness to put any questions to him, which might be put in cross-examination by the adverse party. It is to be noticed that if a party calls a witness to depose on his behalf and if he deposes against the person calling him as witness, for example, hostile witness, then the discretion is granted to the Court u/s 154 of the Act, to permit the party calling such witness to put any questions to him which might be put in cross-examination by the adverse party. Before Section 154 of the Act, the earlier sections under Sections 137 and 138 have to be followed and a combined reading of Sections 137, 138 and 154 goes to show that a party cannot be called directly only for the purpose of cross-examination.

3. After disposal of the C.R.P. No. 5855 of 2007, the defendant summoned his vendor-Seethaiah as witness. Seethaiah has been examined in chief on 12-10-2009 as D.W.9. He stated in the chief examination that he cancelled the agreement executed in favour of the defendant and returned the earnest money and thereafter, he sold the property to the plaintiff under a registered document. At that stage, the defendant sought permission of the Court to put questions to witness that may be put during cross examination. The plaintiff objected for granting such permission to the defendant. The trial Court on considering the material brought on record and on hearing the counsel appearing for the parties sustained the objection of the plaintiff, by order dated 26-10-2009. The said order is assailed in this revision.

4. Notice before admission came to be ordered on 20-11-2009. The respondent received the notice and entered appearance through a counsel.

5. Heard learned Counsel appearing for the parties and perused the order impugned in the revision.

6. Learned Counsel appearing for the petitioner submits that DW-9 is vendor of the petitioner-defendant No. 3 and since he resiled from the agreement of sale executed in favour of the petitioner-defendant No. 3, permission is required to be given to petitioner-3rd defendant to cross-examine him. In elaborating his argument, learned Counsel submits that DW-9 executed an agreement of sale in favour of petitioner-defendant No. 3 and received substantial portion of the sale consideration and having received the same, he speaks of cancellation of the agreement of sale while being examined in chief and his statement amounts to resiling the agreement of sale in which case permission as sought for is required to be granted to the petitioner-defendant No. 3.

7. It is well settled that merely because one part of the statement of the witness was not favourable to the party, which called him, the Court should not readily conclude that he was suppressing the truth or that his testimony was adverse to

the party, which called him. To grant permission to cross-examine one's own witness, the Court has to exercise its power carefully taking into consideration all facts and circumstances of the case, vide decision of this Court in Smt. Kolluri Kusuma Kumari v. Grandhi Surya Bhagawan 1995 (2) APLJ 370 (HC).

8. For a witness to be treated or declared as hostile there should be some material to show that he made a statement or had done an act in support of the case of the party calling him as a witness at any earlier point of time and is speaking contrary to that statement or act, vide decision of this Court in N. Balaraju and Another Vs. G. Vidhyadhar,

9. The petitioner-defendant No. 3 issued a notice to DW-9 for specific performance of the agreement of sale. In response, DW-9 issued a reply that the agreement executed in favour of the petitioner-defendant No. 3 has been cancelled and earnest money has been returned. Such is the version of DW-9 even before he is being summoned as a witness in the suit, it cannot be said that he is resiling from his earlier statement. Therefore, it is not a fit case to grant permission to the petitioner-Defendant No. 3 to cross-examine his own witness, i.e., DW-9. The trial Court considered the material brought on record in a right perspective and refused to grant permission to cross examine his own witness, i.e., DW-9. I do not see any flaw in the order passed by the trial Court warranting interference of this Court in exercise of powers under Article 227 of the Constitution of India.

10. Accordingly, this Civil Revision Petition fails and the same is hereby dismissed. No order as to costs.