
(2006) 09 AP CK 0148
In the Andhra Pradesh High Court
Case No : CRP No. 4822 of 2006

Vemulapalli Rama Krishna Prasad	Vs	APPELLANT
Hanumanula Bapamma and Others		RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Evidence Act, 1872 — Section 138

Citation : (2007) 1 ALD 470 : (2007) 4 ALT 670

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.V. Bhaskara Reddy, for the Appellant;

Judgement

L. Narasimha Reddy, J.—2nd defendant in O.S. No. 2 of 2004 in the Court of VI Additional District and Sessions Judge, (Fast Track Court), Krishna at Machilipatnam, filed this revision, aggrieved by the order dated 8.9.2006 in I.A. No. 392 of 2004 filed u/s 138 of Evidence Act and Order VIII Rule 5, read with Section 151 C.P.C.

2. For the sake of convenience, the parties are referred to, as arrayed in the suit.

3. The suit was filed by the plaintiff, for the relief of partition and separate possession of the suit schedule properties. It is stated that defendants 1 and 3 are sailing with the plaintiff and the 2nd defendant alone is contesting the matter. The trial of the suit commenced. The plaintiff was examined as P.W.I in chief. He was also cross-examined on behalf of the first defendant. The cross examination on behalf of the second defendant is in progress. On noticing that defendants 1 and 3 have supported the plea of the plaintiff, the second defendant filed I.A. No. 392 of 2004 with a prayer to expunge that portion of the evidence, which related to cross-examination of P.W. 1 on behalf of the first defendant. The trial Court dismissed the application on 8.9.2006. Hence, this civil revision petition.

4. Sri C.V. Bhaskara Reddy, the learned Counsel for the petitioner-second defendant submits that in the course of cross-examination of P.W.I, on behalf of the first defendant, several aspects, which were helpful to the said witness, were elicited, and the said portion of evidence does not fit into the very phenomenon of cross-examination.

5. The short question, that arises for consideration in this civil revision petition is as to whether the portion of the evidence of P.W.I, which relates to the cross-examination on behalf of the first defendant, is liable to be deleted.

6. In the trial of a suit, any witness examined on behalf of the plaintiffs must be cross-examined by the defendants. If all the defendants are sailing together, common cross-examination on their behalf would suffice. On the other hand, if there is any conflict of interests as between defendants, the cross examination of the witness examined on behalf of the plaintiffs, must be in the same order, as is reflected in the array of the parties. Exception to this is that such of the defendants, who sail with the plaintiffs, must be required to cross-examine the witness first and the defendants, who oppose the claim of the plaintiffs, irrespective of their array in the cause title, must be given an opportunity to cross-examine the witness at the end. The reason is that the actual cross-examination of a witness can take place, only in the hands of a party opposing the claim. If during the course of such cross-examination, an otherwise friendly defendant, who figures lower in the array, is permitted to cross-examine that witness, at the end, there is every likelihood of the purport of the actual cross examination being neutralized. This Court expressed such a view in *Lokara Om Kumar Vs. Baikan Satyanarayana and Others*, .

7. In the instant case, no prejudice can be said to have been caused to the second defendant-petitioner herein, with the cross examination of P.W.I, on behalf of the first defendant. The question of any defendant, whether he opposes or supports the claim of the plaintiffs, being denied the very right to cross-examine a witness, does not arise. As observed earlier, depending on the nature of the stand taken by the respective defendants, the order of cross-examination must be changed.

8. The learned Counsel for the petitioner-second defendant submits that since the third defendant is also sailing with the plaintiff, he must be required to cross examine P.W.I, before the second defendant is required to do so. The purport of, and the relief claimed in the present I.A. is different. If the second defendant is of the view that the cross-examination on his behalf must be deferred till the third defendant completes his turn, it shall certainly be open to him to make an appropriate application before the trial Court; and such an application, if made, shall be considered, on its own merits.

9. The civil revision petition is, accordingly, disposed of. There shall be no order as to costs.