

(2015) 08 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No. 84644 of 2013 (GM-CPC)

Yallappa M. Mudukappanavar and Others

APPELLANT

Vs

Prakash

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3-A

Citation : (2015) 6 KarLJ 302

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : D.L. Ladkhan, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

K.N. Phaneendra, J.—The defendants 1 and 3 have called in question the order dated 7-11-2013 passed by the I Additional Civil Judge (Senior Division), Hubli, in O.S. No. 232 of 2010, allowing I.A. No. XI filed by the plaintiff under Order 18, Rule 3-A of the Code of Civil Procedure, 1908. I have heard the arguments of the learned Counsel appearing for the petitioners. Notice to be issued to the respondent is dispensed with.

2. It is seen from the records that, earlier, the plaintiff had filed an application seeking permission of the Court to permit him to be examined through power of attorney holder. But the said application was rejected and in fact, the plaintiff came up before this Court in Writ Petition No. 76216 of 2013 wherein this Court by order dated 5-4-2013 observed that the petitioner would be satisfied, if, he is allowed to examine Mahadev G. Agali, as his witness, though not as his power of attorney. Further observed that there is no bar in law in examining such witness in a suit. Therefore, it is open to the plaintiff-petitioner to examine Mahadev G. Agali as his witness to prove his case but not as his power of attorney holder. In addition to Mahadev G. Agali, the petitioner may also examine himself or any other witnesses in support of his case. By the said observation the said writ petition was disposed of. It appears, the plaintiff has filed an application under

Order 18, Rule 3-A of the Code of Civil Procedure seeking permission of the Court to permit him to examine his witnesses earlier to getting examined himself. The Trial Court, by giving reasons, allowed the plaintiff to examine himself later after examination of the witness as requested by him. The Court has also specifically observed that even if the witnesses are examined before the plaintiff is examined, it will not cause any hardship because both the persons have to be subjected to cross-examination and the defendants are at liberty to elicit the fact through cross-examination as he wanted. Therefore, the Court by giving reasons allowed the application filed under Order 18, Rule 3-A of the Code of Civil Procedure. I do not find any strong reasons to interfere with the orders passed by the Trial Court. However, the learned Counsel apprehends that if the plaintiff's witnesses are examined before the Court first and they being cross-examined, if any admission is given by them during the course of cross-examination or any deficiency in their evidence, the plaintiff may patch up the same in his examination-in-chief if he is examined later. The said apprehension, in my opinion, can be controlled by the Trial Court on request by the defendants, permitting the plaintiff to examine his witnesses first and he also shall be examined, thereafter, those witnesses can be permitted to be cross-examined once by the defendants.

With these observations, petition stands disposed of.