

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.2673 of 2015

ORDER:

The order, under challenge in this CRP, is the order passed by the Additional Senior Civil Judge, Gajuwaka in I.A. No.287 of 2015 in O.S. No.206 of 2010 dated 11.06.2015. Four suits i.e., O.S. Nos.198, 206, 207 and 208 of 2010 were directed to be jointly tried. On closure of the evidence of P.W-1 (plaintiff in O.S. No.206 of 2010), the affidavit-in-chief on behalf of P.W-2 was filed on 13.04.2015, and the matter was posted to 29.04.2015 for cross-examination of P.W-2. On the ground that there was no representation on behalf of the respondent herein, the Court below recorded that there was no cross-examination of P.W-2. Thereafter I.A. No.287 of 2015 was filed to set aside the order passed by the Court below on 29.04.2015, and to permit the respondent to cross-examine P.W-2. The said I.A. was allowed on 01.06.2015, and the matter was posted to 10.06.2015 for cross-examination of P.W-2. The respondent herein filed I.A. No.287 of 2015 requesting the Court below to reject the affidavit-in-chief of P.W-2 on the ground that P.W-1 had stated, in his evidence, that he was deposing on behalf of all the plaintiffs. By the order under revision dated 11.06.2015, the Court below allowed the application holding that, if the evidence of P.W-2 was allowed, there was every possibility of repetition of evidence of P.W-1; and more over P.W-1 was estopped by his own admission from introducing P.W-2 as a witness.

Sri T.V.S. Prabhakar Rao, Learned Counsel for the petitioner, would submit that the respondent herein had himself filed I.A. No.287 of 2015 to set aside the earlier order dated 29.04.2015, and to permit him to cross-examine P.W-2; it is he who is estopped from contending that the evidence of P.W-2 should be eschewed; the mere fact that a joint trial was directed to be conducted would not deprive the petitioner of his opportunity to adduce evidence independent of P.W-1; and as it is for the plaintiff to decide the nature of evidence to be adduced, the Court below could not have presumed that the evidence of P.W-2 would be a repetition of the

evidence of P.W-1, thereby depriving P.W-2 of the opportunity to adduce evidence. On the other hand Sri G.V.S. Kishore Kumar, Learned Counsel for the respondent, would rely on Order 18 Rule 3-A CPC, in support of his submission that the Court below was justified in allowing the application.

Order 18 Rule 3-A CPC stipulates that, where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage. All that Order 18 Rule 3-A CPC requires is for the plaintiff to examine himself as a witness first, before any other witnesses are examined on his behalf. The plaintiff in O.S. No.206 of 2010 has already examined himself as P.W-1. He was not, therefore, disabled for examining any other witness on his behalf.

The finding recorded by the Court below that P.W-1 was estopped from adducing the evidence of P.W-2, as he had stated that he was adducing evidence on behalf of all the plaintiffs, does not merit acceptance. If the plea of estoppel is to merit consideration, the respondent herein, by filing the application in I.A. No.287 of 2015 to cross-examine P.W-2, was estopped from contending that the evidence of P.W-2 should be eschewed. It is for the plaintiffs to decide the nature of evidence they choose to let in and, while the defendant would undoubtedly be entitled to cross-examine them, it is not for him to dictate which witnesses should be examined on behalf of the plaintiff and when.

The Court below erred in presuming that the evidence of P.W-2 would be a repetition of the evidence of P.W-1. The order of the Court below suffers from a patent illegality necessitating interference in proceedings under Article 227 of the Constitution of India. The order under revision is set aside. The affidavit-in-chief of P.W-2 shall be restored to file. The Court below shall permit the respondent herein to cross-examine P.W-2 and, thereafter, proceed to dispose of the suits in accordance with law. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date: 04.09.2015

MRKR