

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3608 OF 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondent.

2. The petitioner herein is the defendant in O.S.No.428 of 2006 on the file of the Court of Principal Senior Civil Judge, Eluru (for short, trial Court). The respondent herein, who is the plaintiff, filed the above suit for declaration of title in respect of the suit property as per the recitals of the registered sale deed dated 31.03.1994 executed by the plaintiff's mother and for consequential possession of the suit property by evicting the defendant by holding the alleged settlement deed dated 28.01.2005 as tainted with fraud.

3. In the said suit, P.W.4 was examined in chief and, after chief examination, he died. Thereafter, the respondent/plaintiff filed I.A.No.1314 of 2014 praying the trial Court to treat the examination of P.W.4 as part of record and treat it as a statement under Section 32 of the Evidence Act (for short, the Act), as he cannot be produced due to his death on 31.05.2014. The said petition was allowed, by order of the trial Court dated 19.01.2015 taking the aid of Section 32 of the Act. Challenging the said order, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner vehemently contended that the petition filed by the respondent under Section 32 of the Act is not applicable to the facts of the case,

but he admits that Section 33 of the Act is applicable. He however submits that since the petitioner could not avail the opportunity of cross-examining P.W.4, his chief examination should not be taken into consideration at all.

5. The trial Court, by relying on a Division Bench decision of this Court in **Somagutta Sivasankar Reddy v. Palapandla Chinna Gangappa** (though the trial Court did not mention the complete citation in its order), allowed the application of the respondent. In **Somagutta Sivasankar Reddy's** case (1 supra), this Court categorically held that the evidence given by a witness, who died, cannot be excluded, but the probative value and weight of such evidence would depend on the facts of each case.

6. This Court sees no ground to interfere with the impugned order of the trial Court and accordingly the Civil Revision Petition is dismissed at the admission stage. However, the trial Court shall take the relevancy of the evidence given by P.W.4 at the time of disposal of the suit. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 12.11.2015

Note: The Registry is directed to inform
the Principal Senior Civil Judge, Eluru
not to cite any decision without quoting
the relevant citation in the order hereafter.

B/o. TJMR

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