

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.1373 of 2009

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.12-02-2009 on Memo S.R.No.428 of 2009 in O.S.No.4638 of 2000 of the VI Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is plaintiff in the above suit.
3. The petitioner filed the suit for a mandatory injunction against respondents for directing them to vacate and hand over vacant possession of the plaint schedule property and also for a perpetual injunction restraining the respondents from using the watchman room for commercial use or by allowing third parties other than the respondents to enter therein and for other reliefs.
4. Written statement was filed by respondent Nos.2 and 3 opposing the suit claim.
5. Later respondent Nos.4 to 7 were also impleaded in the suit and they also filed their written statement.
6. The plaintiff is claiming to be the owner of the plaint

schedule property. Likewise defendant Nos.4 to 7 are also claiming ownership over the property. Defendant Nos.1 to 3 on the other hand claimed to be the persons in possession of the plaint schedule property.

7. Issues were framed and trial commenced. Evidence on the side of plaintiff was closed and the matter was coming up for cross-examination of D.W.1.

8. At that stage, the learned counsel for petitioner/plaintiff filed a memo stating that defendant Nos.1 to 3 and defendant Nos.4 to 7 are sailing with each other; therefore before the petitioner commences cross-examination of D.W.1, defendant Nos.4 to 7 are to first cross-examine D.W.1; and otherwise the petitioner's interest would be defeated by cross-examination of defendant Nos.4 to 7 subsequent to his cross-examination.

9. By order dt.12-02-2009, the Court below rejected the said contention. It held that though defendant Nos.1 to 7 deny the title of petitioner, their denial of title is entirely different on different grounds from each other; petitioner had filed several petitions on several grounds and taken adjournments; when the Court compelled the petitioner to commence cross-examination of D.W.1, this memo is filed; and the contention raised by petitioner is not tenable.

It held that examination and cross-examination of witnesses would be governed by their pleadings and the contention of petitioner cannot be accepted.

10. Learned counsel for petitioner contended that this view of the Court below is incorrect and that defendant Nos.1 to 3 got defendant Nos.4 to 7 impleaded and are seeking their support to oppose the claim of petitioner/plaintiff; Court below erred in stating that the grounds stated in the written statement by defendant Nos.1 to 3 and defendant Nos.4 to 7 are entirely different; adjournments were no doubt taken by petitioner because counsel for petitioner had a knee surgery and was unable to attend the Court. It is further contended that as per Sections 137 and 138 of the Evidence Act, 1872, it is the defendant Nos.4 to 7 who have to first cross-examine D.W.1 and therefore the memo was filed.

11. None appears for respondent Nos.4 to 7 even though they have been served. The Revision had been dismissed against respondent Nos.2 to 3 on the ground that conditional order passed by the Court on 23-11-2012 to pay process to them, has not been paid.

12. The petitioner/plaintiff had claimed title in respect of the plaint schedule property. This fact was denied by respondent Nos.2 and 3, who claimed through deceased

1st respondent/1st defendant. They contended that the deceased 1st respondent was a watchman-cum-gardener to the plaint schedule property and respondent Nos.2 and 3 had also resided with him in the said building. They contended that 4th respondent Corporation had filed L.G.C.No.74/2001 against petitioner to declare the petitioner as a land grabber; on 15-03-2005 the said L.G.C. was allowed declaring the petitioner as a land grabber and directing the petitioner to vacate the plaint schedule property; and so the suit filed by petitioner is not maintainable.

13. The 6th respondent also supported respondent Nos.2 and 3 and contended that the Municipal Corporation of Hyderabad is the sole absolute and exclusive owner and that respondent Nos.1 to 3 were sub-licensees of the said Corporation. It is alleged that the Municipal Corporation of Hyderabad had obtained a decree against petitioner in L.G.C. No.74 of 2001 and the judgment therein is binding on petitioner and bars the filing of present suit.

14. It is thus clear that respondent Nos.2 and 3 are sailing along with respondent Nos.4 to 7 and all of them are opposing the claim of petitioner.

15. Therefore, the question for consideration is:
“Whether in the light of the above facts, DW.1 should be cross-examined first by petitioner and then by respondent Nos.4 to 7 or not?”

16. In my considered opinion, since admittedly all the respondents are sailing together, it would result in grave injustice if petitioner is made to cross-examine D.W.1 first before the said witness is cross-examined by respondent Nos.4 to 7. If that happens, it would render the cross-examination, if any, done by petitioner nugatory. Therefore, the contention of the petitioner that he should be allowed to cross-examine D.W.1 only after respondent Nos.4 to 7 cross-examines him, has to be sustained. Similar view has been taken by this Court in C.R.P.No.2334 of 2009 decided on 25-06-2015.

17. Therefore, I do not agree with the Court below that the contention raised by the petitioner in the memo is not tenable.

18. For these reasons, the Civil Revision Petition is allowed; the impugned order is set aside; and the objection raised by petitioner in the Memo SR No.428 of 2009 in O.S.No.4638 of 2000 is sustained. No costs.

19. As a sequel, miscellaneous petitions pending if any,

shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 06-07-2015

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