

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P.No.894 OF 2015

Between:

Jondhle Bhagwan Das

... Petitioner(s)

and

Raja Jondhle and three others.

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: ***13th August, 2015.***

SUBMITTED FOR APPROVAL:

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

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| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.894 OF 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.30.01.2015 in I.A.No.24 of 205 in O.S.No.264 of 2011 of XIV Additional Chief

Judge(FTC) Civil Court, Hyderabad.

2. The petitioner herein is the 1st defendant in the suit. The respondents 1 and 2 filed the said suit for partition against the petitioner and respondents 3 and 4. The respondents 3 and 4 are sailing with respondents 1 and 2. The evidence on the side of the plaintiffs/respondents 1 and 2 was recorded in the open Court, but when the matter was coming for the evidence of petitioner/1st defendant, the Court below passed an order dt.16.12.2014 appointing an Advocate-Commissioner to cross-examine the petitioner, whose chief-examination affidavit was filed and posted the matter on 29.11.2014 for return of the warrant. According to the petitioner, this was done in spite of opposition by his counsel and he wanted to be cross-examined in the open Court.

3. He therefore filed a petition on 29.12.2014 to recall the order dt.16.12.2014 and permit his cross-examination and examination of respondents 3 and 4 in the open Court. It was also alleged by him that in complicated suits like partition suit, the Advocate-Commissioner should not be asked to record evidence.

4. In the meantime, the Advocate-Commissioner filed report on 28.01.2015 stating that the petitioner and his counsel did not cooperate with him for execution of the commission and therefore she could not execute it.

5. Taking into account the said report, by order dt.30.01.2015, the Court below dismissed I.A.No.24 of 2014 with costs stating that the petitioner, intentionally without any sufficient reason, is dragging on the matter.

6. Challenging the same, this Revision is filed.

7. Sri S.Sharath Kumar, Counsel for the petitioner, contended that the Hon'ble Supreme Court in **Salem**

Advocate Bar Association, Tamil Nadu v. Union of India^[1]

in W.P.(Civil) No.496 of 2002 decided on 02.08.2005 held that although hard and fast rules controlling discretion of the Court to appoint Commissioner to record cross-examination and re-examination of witnesses in exercise of power under Order XVIII Rule 4(2) CPC cannot be laid down, in cases involving complex question of title and complex question in partition or suits relating to partnership business or suits involving serious allegations of fraud, forgery, serious disputes as to the execution of the Will etc., the Court may prefer to itself record the cross-examination of the material witnesses. He therefore contends that since the suit out of which this Revision arises is a suit for partition, necessarily a complex question is involved in it. Therefore, cross-examination of DW1 ought to be done in the open Court only and not through the Advocate-Commissioner.

8. Counsel for the respondents 1 and 2 has stated that the

evidence of respondents 1 and 2 was recorded in the open Court but probably on account of pressure of work, the Court below had directed recording of cross-examination of DW1 through an Advocate-Commissioner.

9. The counsel for respondents 3 and 4/defendants 2 & 3, who are sailing with respondents 1 and 2, states that the 3rd respondent is aged more than 75 years; since the petitioner is likely to harass her in the cross-examination if it is done through an advocate-commissioner, it would be more convenient if the cross-examination of DW1 as well as recording of evidence of respondents 3 and 4 is done in the open Court.

10. I have noted the submissions of both sides.

11. In ***Salem Advocate Bar Association's*** case(referred to above), the Supreme Court has only indicated that where complex questions arise in suits for partition, the Court may prefer to itself record the cross-examination of the material witnesses. Therefore, it is for the trial Court, in a given case whether to consider the issues raised in a partition suit are so complex that recording of evidence in open Court, is warranted.

12. After perusing the plaint in the present case, although I do not feel any complex questions as are contemplated in ***Salem Advocate Bar Association's*** case(referred to above)

arise in the present suit for partition, keeping in view the comfort and convenience of the 3rd respondent, who is a senior citizen, and since it is stated by the counsel for the 3rd respondent that there is a better chance for the matter to be concluded quickly if the evidence is recorded in the open court, I set aside the order dt.16.12.2014 in O.S.No.264 of 2011 as well as the order dt.30.01.2015 in I.A.No.24 of 2015 in O.S.No.264 of 2011 on the file of XIV Additional Chief Judge(FTC) Civil Court, Hyderabad and direct the said Court to itself record the cross-examination of DW1 as well as the cross-examination of respondents 3 and 4 in the open Court.

13. Since, it is stated by the counsel for all the parties that 20.08.2014 is a convenient date for all the parties, on that date DW1 shall be present and subject himself to cross-examination in the open Court by the counsel for the respondents. After conclusion of the same, the evidence on the side of the defendants including respondents 3 and 4 may be taken up and concluded by the Court below as expeditiously as possible preferably by the end of September, 2015, since the 3rd respondent is a senior citizen and it shall then proceed to decide the suit after hearing the arguments of both sides.

14. The Civil Revision Petition is allowed with the above direction. There shall be no order as to costs.

15. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

13th August, 2015.

Note: *Issue C.C. by 17.08.2015.*

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[\[1\]](#) 2005(6) SCC 344