

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

C.R.P.No.4687 of 2012

ORDER:

Heard Sri Kambhampati Ramesh Babu, learned counsel for the petitioner and Sri K.Sita Ram, learned counsel for the respondents.

2. This Revision Petition is filed challenging the order dt.25-06-2012 in I.A.No.75 of 2012 in O.S.No.402 of 2008 of the Principal Junior Civil Judge, Eluru, West Godavari.

3. Petitioner herein is the plaintiff in the said suit. Suit was filed by the petitioner seeking injunction against the respondents. Written Statement was filed by the respondents opposing the suit claim. Issues were framed and evidence on the side of the petitioner was closed. The case was then posted for the evidence on the side of the respondent/defendant.

4. At this stage, an affidavit in lieu of chief examination prepared in the name of 1st respondent, but signed by his father, was filed on record by the learned counsel for the respondents. The father of 1st respondent, who is not a party to the suit, went into the witness box and also gave evidence. It was discovered by the Court while recording the evidence of the witness

that the person who entered the witness box was not the 1st respondent but his father, and the witness disclosed his identity as the father of 1st respondent.

5. In view of this development, respondent Nos.1 and 2 filed I.A.No.75 of 2012 to ignore the evidence of D.W.1 and give an opportunity to 1st respondent to examine himself as D.W.1.

6. In the affidavit filed in support of the said application, 1st respondent contended that his father looked after Court affairs and the chief examination affidavit prepared in his name was signed by his father and filed into Court. He contended that nobody noticed that the father of 1st respondent was not a party and he had signed on the affidavit prepared in 1st respondent's name and the affidavit was taken on file and Exs.B-1 to B-10 were also marked. During cross examination of 1st respondent's father, the Court noticed the mistake and posted the matter for steps and to rectify the same.

7. The 1st respondent contended that the mistake is an accidental and unintentional error under the *bona fide* impression that the father of 1st respondent was also a party to the suit and he had no evil intention or motive. He therefore prayed that the evidence of D.W.1 recorded by the Court be expunged or removed and

ignored and accord him an opportunity to examine him as D.W.1.

8. This application was opposed by the petitioner contending that putting of signature in an affidavit prepared in the name of another person itself is a crime; that it amounts to contempt of Court; there is no excuse; and it is a gross abuse of Court procedure and amounts to moral turpitude. It was stated that the witness had never told the Court that he is not the 1st respondent and he tried to mislead the Court by giving evidence as 1st respondent-defendant. It was further contended that evidence of any witness cannot be eschewed after completion of chief examination and part of cross examination; and if evidence is eschewed at this stage, other side's right to cross examine the witness would be defeated. It was alleged that the witness i.e. the father of 1st respondent was guilty of impersonation, that his conduct is not at all excusable and therefore the petition should be dismissed with costs.

9. By order dt.25-06-2012, the Court below allowed the said application on payment of costs of Rs.2,000/- and directed that the entire evidence of D.W.1 recorded by it to be expunged and permitted the filing of chief examination affidavit of 1st defendant as D.W.1.

10. In its order it observed that discovery of the

fact that the person who entered into the witness box as D.W.1 was not the 1st defendant but his father was made by the Court; the witness never impersonated or knowingly suppressed his identity and he signed not as his son Bala Venkata Satyanarayana Raju but only as Suryanarayana. It therefore held that ingredients of Section 416 CPC are not attracted. It held that if really he had an intention to mislead the Court, he would not subscribe the name of his son on the affidavit prepared in the name of his son who is the 1st defendant in the suit; the advocate for the defendants is equally responsible for his negligence since he ought to have verified that the person in whose name affidavit is prepared, signed it and gave evidence; no objection was raised by the petitioner at any point of time till the Court itself discovered this fact; since this occurred on account of mistake of 1st respondent as well as his counsel, it is a fit case where evidence of D.W.1 was already recorded should be eschewed and expunged. It rejected the contention of the petitioner that if the petition is allowed, right of cross examination would be defeated and held that prejudice would be caused to the other side only when the Court considered any portion of the evidence of the witness; and as the entire evidence is ignored, there is no question of prejudice.

11. Challenging the same, this Revision Petition

is filed.

12. Learned counsel for the petitioner contended that it is clear case of impersonation by the father of 1st respondent as if he is the 1st respondent; since 1st respondent's father has been cross examined as D.W.1, the entire defence of the petitioner has been revealed and serious prejudice would be caused to the petitioner, if the order of the Court below is allowed to stand. He also contended that there is no *bona fide* mistake on the part of 1st respondent as held by the Court below and since it is a serious matter, no opportunity should be given to 1st respondent to lead evidence at all, as a penalty.

13. Learned counsel for the respondents Nos.1 and 2 refuted the above contentions and supported the order passed by the Court below.

14. It is pertinent to note that chief examination affidavit was prepared in the name of 1st respondent. But it was signed on each page by his father D.Suryanarayana. Nobody noticed it including the Court when it was filed into Court. Thereafter, the learned counsel for the petitioner cross examined the witness in part and it was the Court which then discovered that the person in the witness box is not 1st respondent, but his father. Even the cross examination evidence was signed

by the witness as D.Suryanarayana only. The witness had never attempted to state that he is the 1st respondent and never suppressed his identity.

15. It is no doubt true that the learned counsel for the respondent Nos.1 and 2 should have taken care to ensure that the affidavit in lieu of chief examination prepared in the name of 1st respondent is signed by 1st respondent and not by his father. But he did not do so. Even the learned counsel for the petitioner had not noticed this. So he is equally negligent.

16. In my considered opinion, the Court below has rightly held that the father of 1st respondent has not committed any offence under Section 416 CPC and it was a case of *bona fide* mistake on account of negligence of counsel for 1st respondent in getting the affidavit prepared in the name of 1st respondent signed by 1st respondent's father. On account of mistake of counsel, in a situation like the present one, a party like 1st respondent cannot be penalized by depriving him to an opportunity to lead evidence. The Court below has rightly imposed costs of Rs.2,000/- on 1st respondent to rectify what happened while expunging the evidence already recorded by it for D.W.1 and permitting the 1st respondent to file another chief examination affidavit as D.W.1. The contention of the learned counsel for the petitioner that the petitioner

would be prejudice by such cross examination cannot be accepted and his contention that no opportunity should be given to 1st respondent to lead evidence, is also unacceptable.

17. I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

18. Accordingly, the Civil Revision Petition is dismissed. No costs.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-08-2015

kvr