

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.944 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the marking of Exhibits R.1 and R.2 in E.A.No.393 of 2013 in E.P.No.85 of 2011 in O.S.No.318 of 2008 on the file of III Senior Civil Judge, City Civil Court, Secunderabad.

2. The said suit had been filed for eviction of 2nd respondent and the same had been decreed on 09.02.2011.

3. E.P.No.85 of 2011 was filed by the 1st respondent – Decree Holder seeking eviction of 2nd respondent from the E.P. Schedule property.

4. The petitioner herein filed two claim petitions, viz., E.A.No.268 of 2013 and E.A.No.393 of 2013 under Order 21 Rule 97 C.P.C. It appears that E.A.No.268 of 2013 was initially allowed and E.A.No.393 of 2013 was dismissed.

5. Challenging the order in E.A.No.393 of 2013, the petitioner filed CCCA.No.7 of 2013, and challenging the order in E.A.No.268 of 2013, the 1st respondent filed CCCA.No.59 of 2014.

6. CCCA.No.7 of 2013 was allowed and E.A.No.393

of 2013 was remanded back to the executing court.

7. Post remand, the trial was again conducted in which petitioner was examined as a witness and the portions of evidence given by him as PW.1 in E.A.No.268 of 2013 were confronted to him. It appears that two portions of the evidence given by him were admitted by him, resulting in marking of the same as Exhibits R.1 and R.2.

8. Challenging the same, the present Revision is filed.

9. The counsel for petitioner contended that since the petitioner is very much alive, marking of portions of his evidence given as PW.1 in E.A.No.268 of 2013 is contrary to Section 33 of the Indian Evidence Act, 1872 (for short, 'the Act') which prohibits statements of person who is alive to be taken in evidence in other proceedings.

10. On the other hand, the counsel for 1st respondent contended that under Section 145 of the Act, it is permissible for a witness to be confronted in cross-examination by previous statement made by him with an intend to contradict him and therefore no objection can be taken to the marking of Exs.R.1 and R.2 by petitioner.

11. I have noted the submissions of both sides.

12. Section 145 of the Act states :

“145. Cross-examination as to previous statements in writing :- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

13. It is not disputed by the counsel for petitioner that the petitioner was examined as PW.1 in E.A.No.268 of 2013 and that portions of evidence therein were confronted to petitioner when he was in the witness box in E.A.No.393 of 2013, after it was remanded in CCCA.No.7 of 2013.

14. However, the counsel for petitioner contends that the cross-examination recorded by the court below, at which point of time these two exhibits were marked, was done in the absence of the counsel for petitioner, and therefore the marking of Exs.R.1 and R.2 cannot be sustained.

15. Even assuming for the sake of argument that the petitioner was cross-examined in the absence of his counsel, in my considered opinion, it would make no difference because even if the counsel were to be present he cannot interfere with the cross-examination of petitioner being done by the counsel for 1st respondent.

16. Therefore, having regard to Section 145 of the Act, I do not find any error in the action of the court below in marking Exhibits R.1 and R.2.

17. The Civil Revision Petition is devoid of merit, and it is accordingly dismissed. No order as to costs.

18. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13.08.2015

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