

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

C.R.P.No.4336 of 2012

ORDER:

Heard Sri N.Vasudeva Reddy, learned counsel for the petitioner and Sri Resu Mahender Reddy, learned counsel for the respondents.

2. This Revision Petition is filed challenging the order dt.21-08-2012 in I.A.No.2633 of 2012 in O.S.No.90 of 2002 of the Principal District Judge, Ranga Reddy, at L.B.Nagar, Hyderabad.

3. The petitioner herein is plaintiff in the above suit. He filed the said suit against the respondents for specific performance of an oral agreement dt.03-11-1999 entered into with him by 1st respondent agreeing to transfer the suit schedule property in his favour and also for vacant possession thereof.

4. Pending suit, 1st respondent made certain alienations in favour of respondent Nos.2 to 17. Therefore they were also impleaded in the suit and the prayer in the suit was also amended seeking a direction to them also to join in the execution of the sale deed.

5. Written Statement was filed on behalf of 1st respondent by the GPA holder disputing the suit claim.

6. After issues were framed, the petitioner completed his evidence and thereafter the GPA holder of 1st respondent examined himself as D.W.1. Thereafter, one more witness D.W.2 was also examined on behalf of 1st respondent.

7. At that stage, 1st respondent filed I.A.No.2633 of 2012 invoking Section 151 CPC to reopen the evidence of 1st respondent and receive the evidence of 1st respondent himself as D.W.3. In the said application, he contended that 1st respondent had executed a power of attorney in favour of his GPA holder, then went to Australia and recently 1st respondent returned to India and now intends to give evidence before the Court. Therefore, the Court was requested to reopen the evidence of 1st respondent and receive the evidence of 1st respondent in person as D.W.3.

8. Counter affidavit was filed by the petitioner opposing the same. He contended that D.Ws.1 and 2 had already been examined on behalf of 1st respondent and no prior permission of the Court was obtained to examine D.Ws.1 and 2 before examining 1st respondent as his own witness at a later stage. He contended that in the absence of such a permission, 1st respondent is precluded from now deposing after examination of the

other witnesses for him. It was also contended that this application is filed to examine 1st respondent only to undo the admissions made by D.Ws.1 and 2 during their cross examination; and since the suit is at the stage of arguments, the evidence of 1st respondent cannot be reopened and he cannot now be permitted to appear as his own witness. It was further pointed out that no evidence is filed in support of the plea of 1st respondent that he was in Australia at the time when evidence on his side was being adduced and therefore he cannot now be permitted to give evidence.

9. By cryptic order dt.21-08-2012, the Court below allowed the said I.A. It merely observed that in the circumstances stated in the affidavit and in order to afford opportunity to 1st respondent to place evidence on record, I.A. is allowed.

10. Challenging the same, this Revision Petition is filed.

11. Learned counsel for the petitioner contended that under Order 18 Rule 3A CPC, where a party himself appears as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage. He contended that in the present case, no permission had

been obtained by the Court at the time when the evidence of 1st respondent commenced to allow 1st respondent to appear as his own witness at a later stage; and without obtaining such permission, at the stage of arguments, 1st respondent cannot be allowed to now lead evidence as his own witness. It was further pointed out that the objections raised by the petitioner in the counter affidavit filed to I.A.No.2633 of 2012, had not even been adverted to nor considered by the Court below. He also contended that to get over the admissions made in the cross examination of D.Ws.1 and 2, the 1st respondent is now resorting to give the evidence himself.

12. Learned counsel for the respondent on the other hand relied upon the decision of this Court in **K.V.Prasad Reddy Vs. Yarabolu Hariprasad Reddy**^[1] wherein this Court had opined that, failure to obtain permission earlier by a party to examine himself at a later stage, is itself not a ground to refuse permission to examine him as a witness at a later stage. This Court held that if a reason for seeking permission at a belated stage is given, which is found reasonable, the Court can grant such permission.

13. I have noted the submissions of both sides.

14. The suit had been filed in the year 2002 for specific performance of the oral agreement of sale by the

petitioner against 1st respondent and later other respondents had been impleaded since they were purchasers from 1st respondent after the alleged oral agreement was entered into by 1st respondent with the petitioner. Admittedly the evidence on the side of the petitioner had been closed. Even the evidence of D.Ws.1 and 2 had been recorded. According to petitioner, the case has been posted for hearing arguments.

15. Be that as it may, this application had been filed alleging that 1st respondent had executed a GPA and had gone to Australia and he had recently returned to India; that he was traveling to different cities within the country on his personal avocations; and he is now intending to give evidence before the Court. No details are given as to when he returned to India and why he could not give evidence when the evidence on the side of the 1st respondent/defendants was commenced. While the contention of 1st respondent counsel herein is that only to clarify the authority of D.W.1, the GPA holder of 1st respondent, to conduct the litigation, the evidence of 1st respondent in person is necessary, this is contested by the petitioner's counsel who contended that to fill up the lacuna of evidence of D.Ws.1 and 2 only, the 1st respondent intends to now give evidence.

16. It is no doubt true that in **K.V.Prasad Reddy**

(supra), this Court had held that failure to obtain permission earlier to examine himself at a later stage under Order 18 Rule 3-A CPC is, *per se*, not a ground to refuse permission to a party examine himself as a witness at a later stage, but the Court observed that there must be a valid reason furnished by the party why he could not examine himself as a witness earlier.

17. In the present case, 1st respondent merely contended that he had recently returned to India and is traveling to different cities within the country on his personal avocations and he has decided to give evidence in the suit without furnishing details as to when he returned to India and what disabled him from entering into the witness box earlier to examination of D.W.1.

18. In the light of this vague pleading of 1st respondent, I am of the opinion that the Court below ought not to have exercised its discretion to reopen the evidence of 1st respondent and permit him to give evidence as D.W.3. Also the order passed by the Court below does not contain any reasons why it allowed I.A.No.2633 of 2012.

19. In this view of the matter, the impugned order cannot be sustained. Therefore, the Civil Revision Petition is allowed the impugned order dt.21-08-2012 in I.A.No.2633 of 2012 in O.S.No.90 of 2002 of the Principal

District Judge, Ranga Reddy, at L.B.Nagar, Hyderabad is set aside and the said I.A. is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-09-2015

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[\[1\]](#) 2005 (6) ALT 830