

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.2989 of 2015
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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/1st defendant is directed against the orders dated 13.02.2015 of the learned III Additional Senior Civil Judge, Vijayawada passed in IA.no.566 of 2014 in IA.no.1359 of 2001 in OS.no.445 of 1998 filed under Order XVI Rule 14 and Section 151 of the Code of Civil Procedure, 1908 to examine the 1st respondent as a Court witness.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant. The GPA holder of the 1st respondent/plaintiff is present.

3. The facts, which are necessary for consideration, in brief, are as follows:

In an Interlocutory application, which is filed for determination of mesne profits, the GPA holder of the 1st plaintiff, who is no other than his wife, was examined as PW1. She was cross-examined. Alleging that she is unable to answer certain questions put to her in her cross-examination and that the 1st plaintiff is avoiding to appear before the Court to give evidence and that his presence as a witness is required to answer material questions, more particularly, in view of the evasive answers given by PW1, the aforementioned application is filed by the 1st defendant to examine the 1st plaintiff as a Court witness. That application was resisted by the 1st plaintiff *inter alia* contending that the 1st defendant has no right to seek a direction from the Court to call the 1st plaintiff as a witness and that the matter is at the stage of further evidence and that the petition is premature. The Court below having heard the learned counsel for both the sides and having noted that the

power under Order XVI Rule 14 has to be exercised by the Court *suo motu* and not on the application of a party and that if the party in possession of the best evidence fails to produce such evidence an adverse inference can be drawn notwithstanding the fact that the onus of proof does not lie upon him and that since the main application is only filed for determination of mesne profits had held that it is not a fit case to exercise the discretion to call the opposite party/1st plaintiff as a Court witness and had dismissed the petition. Therefore, the aggrieved 1st defendant is before this Court.

4. The learned counsel for the revision petitioner, while reiterating the case, which is already stated *supra* and also the sequence of events, would contend that the examination of the 1st plaintiff as a Court witness is essential for eliciting the truth in view of the fact that the GPA holder of the 1st plaintiff, who is examined as PW1, is unable to answer certain material questions and that the 1st plaintiff is avoiding to give evidence before the Court and that, therefore, the order impugned is unsustainable.

5. I have given earnest consideration to the facts and the submissions. In view of the settled legal position in the decision of this Court in **Shaik Abdul Rasool v. G.Lakshmi Reddy**^[1], this Court is of the well considered view that an application by the 1st defendant to summon the 1st plaintiff as a Court witness is not maintainable and is liable for dismissal on that ground alone. Be that as it may. If really the evidence of PW1 is not sufficient to substantiate the claim of the principal, that is, the 1st plaintiff, the 1st defendant can take advantage of the said fact. Further, if PW1 is not in a position to answer certain material questions and that the examination of the 1st plaintiff as a material witness is essential, the 1st defendant can as well request the Court below to draw an adverse inference for non examination of a material witness, but he cannot file an application and ask the Court to exercise the discretionary power under Order XVI Rule 14 to summon the 1st plaintiff as a Court witness.

6. Viewed thus, this Court finds that there is no error much less

jurisdictional error calling for interference.

7. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall also stand dismissed.

M. SEETHARAMA MURTI, J

18th April, 2016
Vjl

[\[1\]](#) 2011 (1) L.S 60