

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4433 OF 2016

ORDER:

The Civil Revision Petition is filed against the docket order dated 26.08.2016 passed in I.A. No.431 of 2016 in O.S. No.272 of 2009 on the file of XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad.

2) Heard learned counsel for the revision petitioners and learned counsel for the respondent No.1. Perused the material on record.

3) The revision petitioners are petitioners/ defendants 2 and 3 in I.A. No.431 of 2016 in O.S. No.272 of 2009. Respondent No.1 to the revision is the plaintiff, respondent No.2 to the revision is defendant No.1 to the suit, who is endorsed as not necessary party in the revision. The notice sent to defendant No.1, through Court, is returned with an endorsement 'Addressee left' sufficient service and the personal notice sent by plaintiff, from the track record of India Post, shows that duly served on 26.10.2016.

4) From the application filed by 2nd defendant among petitioners/ defendants 2 and 3 before the lower Court in I.A. No.431 of 2016, the plaintiff and 1st defendant are sailing together including from the written statement of 1st defendant admitting the suit claim and supporting the case of plaintiff and 1st defendant, thereby, to lead evidence first and thereafter the defendants 2 and 3 to lead their evidence as they were so advised first to adduce the evidence of 1st defendant before the trial Court. The trial Court closed the evidence of defendants on 29.04.2016 and they filed an

application to permit the defendants 2 and 3 to adduce their evidence by setting aside same.

5) The impugned order dated 26.08.2016 shows heard both parties. Perused the docket order. The defendants are insisting each other for adducing evidence. Hence this petition is dismissed. It is the same, now, impugned in the revision as unsustainable, unjust and arbitrary and liable to be set-aside for no counter to the petition by plaintiff, there was no meaning in dismissing the application without answering who has to adduce the evidence, if at all among defendants *inter se*.

6) Order XVIII Rule 1 C.P.C speaks that plaintiff has right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

7) Order XVIII Rule 2 CPC speaks the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. Rule 2 (2) speaks the other party shall then state his case and produce his evidence, if any, and may then address the Court generally on the whole case.

8) Here, the evidence of plaintiff is completed and it is coming up for evidence of defendants. The written statement of 1st defendant at page No.1 shows he admits that entire suit as true with no dispute and 2nd defendant obtained her signatures on stamp paper and some more pages misrepresenting that the same

related to Bank deposits of her late Brother Captain P.Rama Rao. It is for the 1st defendant to adduce her evidence first before commencement of evidence of defendants 2 and 3. As can be seen from the docket order of the lower court, lower Court posted the matter for defendants evidence and even there is an *inter se* dispute between them who has right to begin among them and without answering the issue, closed the evidence of all the defendants. When the application covered by the impugned order in I.A. No.431 of 2016 was dismissed in one line order, even there is no counter filed, without adverting the scope of law from the facts and previous docket orders that defendants are insisting each other for adducing evidence, hence the petition is dismissed.

9) It can be said the same is nothing but perverse and unsustainable and not a judicial order in the eye of law. As the application is to adduce evidence and reopen the evidence of defendants 2 and 3, the court should have answer to permit or not to permit and did not do so and even ignored the facts on record of 1st defendant supporting the case of plaintiff and disputing against defendants 2 and 3 saying what are the documents relying said to have obtained her signatures and same are inter colluded, thereby after completing the evidence of plaintiff, the defendant No.1 shall commence her evidence then only the defendants 2 and 3 adduce their evidence.

10) Having regard to the above, the revision is disposed of by setting aside the impugned order of the lower Court. The lower Court is directed, by virtue of this order, to fix a date to the 1st defendant to adduce her evidence, if any, and in the event of adducing her evidence, record the same and then only permit the

defendants 2 and 3 to adduce their evidence. It should be made clear by the lower Court that if the 1st defendant failed to adduce evidence her right to adduce evidence shall not arise again after the evidence of defendants 2 and 3. No order as to costs.

11) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.31.10.2016
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