

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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CIVIL REVISION PETITION No.759 of 2011

Between:

Kamilikar Gopal and others.

....Petitioners

and

Jannu Victoria and others.

....Respondents

JUDGMENT PRONOUNCED ON : 19.01.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.759 of 2011

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ORDER:

The petitioners herein are the defendants in O.S.No.2029 of 2003 on the file of the learned II Additional Junior Civil Judge, Warangal. The first respondent herein filed the said suit seeking permanent injunction in respect of 385.94 square yards of land. She examined her husband as P.W.1 by availing the provisions of Section 120 of the Indian Evidence Act as he executed a gift deed in her favour. However, after completion of the evidence of P.W.1, she thought it fit to take leave from the Court to examine herself as P.W.2, as she being the plaintiff in the suit. She filed I.A.No.1720 of 2010 for the said purpose under Order 18 Rule 3(A)

of CPC. She filed an affidavit in lieu of her chief examination. The petitioners herein, who are the defendants, took objection to the petition filed by the plaintiff. The lower Court considered the decision in **Garigipati Kesava Rao v. Prathipati Srilakshmi**^[1] relied on by the learned Counsel for the petitioner before it, and allowed the application by order dated 03.12.2010. The present Civil Revision Petition is filed by the defendants challenging the said order.

Learned Counsel for the petitioners submits that the impugned order is contrary to the decision of this Court in **Devarapalli Patabhi Ramaiah v. Davuluri Lakshmi Prasanna**^[2]. A perusal of the ratio laid down therein does not support the case of the petitioners. What all was stated in the said decision was that the Court should record reasons while granting permission under Rule 3A of Order 18 of CPC.

Learned Counsel for the first respondent relied on a decision of this Court in **K.V.Prasad Reddy v. Yarabolu Hariprasad Reddy**^[3]. In the said decision, the plaintiff initially examined the GPA holder and later on sought permission to examine himself as the plaintiff. This Court allowed the said application with the following observations:

“(4) Since Rule 3-A of Order 18 C.P.C. vests the Court with the power to permit a party to be examined at a later stage for reasons to be recorded, it is clear that the fact that a party did not obtain permission earlier to examine himself at a later stage, *per se*, is not a ground to refuse the permission to examine himself as a witness at a later stage. So, petition seeking permission to examine a party as a witness can be filed at any stage during the pendency of the suit, but reason for seeking permission at a belated stage will have to be explained, to enable the Court to record reason for granting permission, provided it wishes to exercise its discretion to grant such permission. So, merely because a party did not reserve his right to come into the witness box, before he examines his witnesses, he *ipso facto* does not lose his right to examine himself as a witness at a later stage. He can, by giving reasons for his failure to examine himself as a witness earlier, seek permission of the Court to depose in support of his case.

(5) Power of Attorney of the petitioner gave evidence on

behalf of the revision petitioner. But, he is not a substitute for the revision petitioner. So, revision petitioner might have been advised to give evidence. Since the suit is for perpetual and mandatory injunctions, though revision petitioner seems to be guilty of laches, since the other side can be compensated by Costs for the inconvenience caused, and since it is well known that rules of procedure are but handmaids of justice, revision petitioner can be directed to pay Rs.2,000/- as costs to the respondent for his laches.”

In the present case also the plaintiff gave sufficient reason in support of the application seeking leave of the Court to examine herself as witness after examination of P.W.1.

In the circumstances, the order passed by the learned II Additional Junior Civil Judge, Warangal, does not warrant any interference as the order speaks of the circumstances in which the application was allowed.

The Civil Revision Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

19.01.2016

VS

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[\[1\]](#) 2006 (3) ALD 68

[\[2\]](#) 1997 (6) ALT 475

[\[3\]](#) 2005 (6) ALT 830