

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.2366 of 2015
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ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/defendants 1 to 3 is directed against the order dated 22.01.2015 of the learned IV Additional Senior Civil Judge, holding Full Additional Charge of the post of the IX Additional Senior Civil Judge, (Judge, Fast Track Court), City Civil Court, Hyderabad passed in I.A.no.48 of 2014 in O.S.no.765 of 2008 filed under Order XVI Rule 1 read with Section 151 CPC to issue summons to the following witnesses, namely, (i) Sri C.Madhukar Reddy, Advocate and (ii) Sri K.Shankaraiah, Advocate.

2. I have heard the submissions of the learned senior counsel for the petitioners/defendants 1 to 3 ('the petitioners', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the 1st respondent', for brevity). The other respondents 2 to 4 are the defendants 4 to 6 in the suit. I have perused the material record.

3. The facts that lead to the filing of this revision, in brief, are as follows:

The petitioners filed an interlocutory application under Order XVI Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to summon the following witnesses, namely (i) C.Madhukar Reddy and (ii) K.Shankaraiah for being examined as witnesses on the side of the defendants/petitioners. The said application was resisted by the 1st respondent/plaintiff. On merits, the trial Court had dismissed the application of the petitioners. Therefore, the petitioners had filed this civil revision petition.

4. The facts pleaded and the submissions made in support of the request of the petitioners to summon the aforementioned witnesses may be stated, in brief, as follows: 'The suit is filed for eviction and recovery of possession of

the suit schedule property, pursuant to a notice to terminate the tenancy. The defendants are *inter alia* contending that there is no jural relationship between Prabhakar Reddy and Krishna Murthy, the father of the 2nd defendant and that they have acquired title by prescription. There was previous litigation between the parties and it culminated after final adjudication by the Supreme Court. In the circumstances, which are stated supra, the defendants intend to examine the above two witnesses on their side. Therefore, the application is filed seeking to issue summons to the said witnesses to enable the petitioners to examine them as a witness on their side. However, the trial Court had rejected the request to summon them *inter alia* holding to the following effect: 'The only purport and import of the relief sought for by the petitioners/defendants 1 to 3 is to examine the proposed witnesses in respect of exchange of legal notices with the original lessor to substantiate their defence that there is no jural relationship between the father of the petitioners/defendants 1 to 3 and the lessor-N.Prabhakar Reddy, consequent upon the execution of the sale agreement dated 23.9.82 and to further establish that their father had continued to be in possession after the termination of the tenancy by the lessor and that as such, the suit filed by the plaintiff is barred under law.' The trial Court had also taken note of the fact that the earlier litigation i.e., the suit for specific performance of agreement of sale filed by Krishna Murthy against the original lessor was dismissed and had then held that therefore, it is just and proper for the defendants to first lead evidence in respect of their defence and that thereafter, in case of necessity, they can summon and examine the proposed witnesses; but, the petitioners/defendants cannot be permitted to summon their witnesses without examining any one or all of the petitioners/defendants 1 to 3 at the first instance and that therefore, the subject petition is premature and cannot be considered.

5. The learned senior counsel would submit that examination of the two witnesses by summoning them through Court is highly necessary as the plaintiff had failed to examine the crucial witness with an intention to suppress the real truth and to see that the real truth is not brought before the

Court. He would also submit that since both the witnesses are Advocates, they do not come to Court and appear as witnesses unless the Court summons the said witnesses. However, no explanation is forthcoming as to why the defendants/petitioners intend to examine the said witnesses in the first instance even without examining any one of the defendants 1 to 3 in the first instance to substantiate the defence. The learned senior counsel for the petitioners/defendants 1 to 3 had placed reliance on the following decisions.

- (i) Kondavaeeti Pranchbis v. Mallarapu Lurdamma^[1]
- (ii) Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna^[2]
- (iii) Aitipamula Shivalingam & Anr v. Aitipamula Chinna Narsamma^[3]
- (iv) Lalita Tyagi v. M.Chandrakala^[4]
- (v) Shaik Rafath Begum v. T.V.R.Anjaneyulu (died through L.Rs)^[5]
- (vi) Bonthu Venkatramana v. Patrevu Samba Murthy and others^[6]
- (vii) M/s.Kwality Restaurant, Amritsar v. Satinder Khanna, Amritsar^[7]
- (viii) Smt.Gangavva v. Arjuns^[8]
- (ix) Marappa Gounder v. Sellappa Gounder^[9]
- (x) G.K.Rao v. A.Henry^[10]
- (xi) Bhanumathy v. M.Venkatesan and others^[11]
- (xii) Jagannath Nayak v. Laxminarayan Thakur^[12]

I have carefully gone through the cited decisions. There is no quarrel with the propositions in the cited decisions, wherein the power of the Court under the provisions of Order XVI Rule 14, Order 18 Rule 3(A) and the directory nature of Rule 3(A) are discussed. It is no doubt true that a party can even without examining himself establish his case by examining witnesses who are

competent to testify. Even in cases where the party, who has the knowledge of facts of the case, fails to go into the witness box, depending on the facts and circumstances of the case, the Court may only draw an adverse inference against him for his failure to give evidence. A witness who has personal knowledge about the facts in issue in the suit is a competent witness to speak about the facts in issue. If the evidence of a witness is hearsay evidence, the opposite party can raise an objection that such evidence is inadmissible in evidence or can at the stage of arguments contend that such hearsay evidence of such witness cannot be relied upon to give a finding on the facts in issue. Though Rule 3-A of Order 18 CPC directs that the party wishing to examine himself as a witness, has to give evidence as a witness in the first instance before he examines other witnesses, it vests the Court with the power to permit a party to the suit to give evidence as a witness on his behalf at a subsequent stage, by recording reasons therefor. Thus, under this Rule 3-A, the Court has discretion to grant permission to a party to appear as a witness even after he has produced other witnesses on his behalf. Further, no specific stage is prescribed or fixed by the statute for securing Court's permission. However, a party shall apply at the stage of commencing his evidence and get necessary permission to appear as a witness after he has produced other witnesses on his behalf. Equally, if sufficient ground is made out, the Court may accord such permission at a later stage even in cases where prior permission was not sought.

6. In the case on hand, the defendants 1 to 3 did not specifically state that they do not intend to examine any one of them. They also did not file an application to permit any one of them to appear as a witness at a later stage, i.e., after they had produced the other witnesses on their behalf. Why defendants 1 to 3 are shirking to enter into witness box in the first instance is not explained. It is also not explained as to why they are not in a position to seek necessary permission under Rule 3-A if they intend to appear as witnesses after they had produced other witnesses on their behalf. Therefore, none of the decisions are helpful to advance the cause of the petitioners/defendants in view of the facts and circumstances peculiar to the

case.

7. No reasons are forthcoming and no explanation is offered by the defendants as to why they are intending to summon the witnesses as witness in the first instance even without any one of the contesting defendants entering the witness box. Be that as it may.

8. The law is well settled that the pleading is not evidence and that unless one of the parties enters the witness box and translates the pleaded case into evidence, the pleading is of no avail. The trial Court while dismissing the petition had categorically observed to the following effect: 'The father of the petitioners/defendants herein had suffered a decree in O.S.no.1322 of 1987 in respect of tripartite oral agreement of sale; and; the suit for specific performance of agreement of sale by Sri A.Krishna Murthy, against the original lessor was dismissed. The said decree had attained finality. The specific defence of the petitioners/defendant is that the jural relationship between the lessor-cum-owner and their father has ceased to exist. That it is just and proper that the petitioners/defendants 1 to 3 shall lead evidence in respect of their defence and thereafter, in case of necessity, the proposed witnesses can be examined. At this juncture, the present application appears to be premature and cannot be considered. The petition lacks merit.' Thus, the trial Court had dismissed the application of the petitioners/defendants as they had filed the petition to summon the witnesses even without adducing any evidence on their side to prove their defence by examining any one of the contesting defendants. Let it be reiterated that the petitioners/defendants did not file an application to permit any one of them to appear as a witness at a later stage, i.e., after they had produced the other witnesses on their behalf. Having bestowed attention and given earnest consideration to the facts and submissions, this Court is of the well-considered view that in the facts and circumstances of the case, the impugned order does not brook interference and that the trial Court is justified in dismissing the application with the aforementioned observations.

9. In the result, the Civil Revision Petition is dismissed. It is made clear that the dismissal of this revision petition shall not preclude the defendants

from examining the said two witnesses on their side by summoning them through Court by invoking the provision of Rule 1 and/or 1A of Order XVI of the Code, after leading the evidence on their side by first examining the party witnesses, i.e., any one or more of the contesting defendants. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

11th April, 2016
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- [\[1\]](#) 1994(3) ALT 425
 - [\[2\]](#) 1997 (6) ALT 475 (D.B)
 - [\[3\]](#) 1998(2) ALD 241 (DB)
 - [\[4\]](#) 2006 (6) ALD 740
 - [\[5\]](#) AIR 2007 ANDHRA PRADESH 23
 - [\[6\]](#) 2004(3) ALD 753
 - [\[7\]](#) AIR 1979 PUNJAB AND HARYANA 72
 - [\[8\]](#) AIR 2001 KARNATAKA 231
 - [\[9\]](#) AIR 1985 MADRAS 183(1)
 - [\[10\]](#) AIR 1987 MADRAS 178
 - [\[11\]](#) AIR 1989 MADRAS 239
 - [\[12\]](#) AIR 1978 ORISSA 1