

*** HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CIVIL REVISION PETITION No.3824 of 2015

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% 09-08-2016

#Paruchuri Adi Lakshmi and two otherspetitioners

Vs.

Paruchuri Nagendramma and six others
.... Respondents

!Counsel for the petitioners : Sri M.R.S.Srinivas

Counsel for the Respondents: Sri Ravi Kumar Toleti

<Gist :

>Head Note:

? Cases referred:

1. AIR 1999 SC 1984

² 1997(1) ALD 144

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

CIVIL REVISION PETITION No.3824 of 2015

Between:

Paruchuri Adi Lakshmi and two otherspetitioners

Vs.

DATE OF JUDGMENT PRONOUNCED: 09.08.2016

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.3824 of 2015

ORDER:

The revision petitioners are respondents 1, 5 and 7 of I.A.No.543 of 2015 and defendants 1, 3 and 7 of the pending suit O.S.No.111 of 2008 on the file of Principal Senior Civil Judge, Ongole. The revision 1st respondent is the plaintiff/petitioner of I.A.No.543 of 2015, revision respondents 2 to 7 are defendants 2 to 4, 6, 8 and 9 and it is endorsed that respondents 4 to 7 of the revision, who are defendants 4, 6, 8 and 9 are not necessary parties and same was recorded, as they remained exparte before the trial Court vide docket order of this Court dated 08.08.2016.

2. The revision is maintained impugning the order dated 17.06.2015 allowing the application of the plaintiff/petitioner under Order XVI Rules 1 and 2 and Section 151 C.P.C.

to summon the attestors of the so called unregistered will dated 11.10.2002 relied upon by the plaintiff in support of the suit claim during the evidence of the plaintiff and not before closure, the recourse is taken.

3. The affidavit averments in support of petition shows that plaintiff while leading his evidence, when wanted to exhibit the will, from the objection raised by the defendants and pursuant to the order of the Court to examine the attestors to prove the will and it is coming for their examination simultaneously with him to let in chief (might be for want of insisting corroboration for cross examination simultaneously by the defendants). The further averment from the affidavit is that, the attestors were when being asked by the plaintiff while saying to come, dodging for not chosen to come. It came to light that some of the defendants threatened said attestors and they are thereby dodging and hence they are required to be summoned through Court for adducing their evidence.

4. The same is opposed before lower Court by counter of the respondents(revision petitioners herein) saying the averments are false and baseless and there is no list of witnesses furnished and once list of witnesses are not furnished, to summon a witness not covered by the list, there is a judicial discretion, which is not automatic unless the Court satisfied under order XVI Rules 1 to 3 of C.P.C.

5. It is from respective contentions the lower Court allowed the petition and impugning the same the revision is filed as referred supra. The learned counsel for revision petitioners while reiterating their counter contest of them before trial Court placed reliance upon the expressions, viz., of the Apex Court in **Lalitha J.Rai v. Aithappa Rai**^[1] and thereby sought for dismissal and the other decision placed reliance is **M.Munaswami Naidu v. K.Nagamani**^[2] in this regard.

6. Whereas, it is the submission of the learned counsel for the revision 1st respondent (sole plaintiff), who is the successful petitioner before the lower Court covered the impugned order that once list of witnesses as contemplated by Order XVI Rule 1 is not mandatory as per several expressions of the Apex Court thereby it enables a party to summon a witness, by assigning reasons. Once the reason of the witnesses are dodging with a promise to come with no mind to come for they are won over by threats by some of the opposite parties,

there is no need to interfere with the order impugned in the revision within the limited scope for this Court under Article 227 of the Constitution of India and hence the same is liable to be dismissed.

7. Heard and perused the material on record.

8. No doubt, once the furnishing of list of witnesses is mandatory under Order XVI Rule 1 C.P.C. from the use of 'shall' for summoning of a witness not shown in the list is a judicial discretion supported by reasons, when not furnished list of witnesses that is required. The exercise of judicial discretion is to be supported by reasons from existence of requirement of furnishing list of witnesses, to lead evidence of the non-listed witnesses by summoning. Here, the provision since interpreted by the expressions of the Apex Court in specifically saying list of witnesses is not mandatory, it makes no difference between the witnesses to be summoned are listed or non-listed witnesses. In fact once the objection is raised for marking though for reference could have been marked by the trial Court, subject to proof when plaintiff wants to exhibit the will in support of the suit claim; for marking of document is different from the appreciation of the contents of the document from proof required by law particularly from specific denial under Section 68 of the Indian Evidence Act of the compulsory attestable document, though registration is optional for the will and irrespective of denial, from the specific provision covered by Section 63 of the Indian Succession Act to examine atleast one of the attestors alive. The applicant-plaintiff when categorically says the attestors when required by him to give evidence orally are dodging with no mind to come, that reason is a sufficient cause for the Court to consider the request to summon, though the other averment about the alleged threats on the witnesses by some of the defendants is with no basis. Thereby the impugned order no way requires interference in revision, when the discretion is properly exercised by the lower Court.

9. Accordingly, this Civil Revision Petition is dismissed. No order as to costs.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:09-08-2016

Note:

L.R. copy to be marked-yes
B/o.
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[\[1\]](#) AIR 1999 SC 1984

[\[2\]](#) 1997(1) ALD 144