

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1241 OF 2016

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 21.12.2015 passed by the learned Additional Junior Civil Judge, Kukatpally at Miyapur, Ranga Reddy District, in I.A.No.460 of 2015 in O.S.No.959 of 2008. The petitioner is the first plaintiff in the suit who, along with other plaintiffs, filed the subject I.A. under Section 151 C.P.C. praying that the trial Court reject the chief evidence affidavit of DW.2. By the order under revision, the I.A. was dismissed.

Heard Sri P.Venkat Reddy, learned counsel for the petitioner/1st plaintiff, and Sri Y.Hema Chander, learned counsel for the 3rd respondent/3rd defendant.

The endeavour of the plaintiffs by way of the subject I.A. was to shut out the evidence of DW.2. The 3rd defendant examined himself as DW.1 and thereafter filed the affidavit in lieu of chief-examination of one A.Natarajan who was proposed to be examined as DW.2. It appears that the said A.Natarajan, along with others, had earlier filed I.A.No.694 of 2004 in the suit seeking to come on record but the said application was dismissed on merits and the same was thereafter confirmed by this Court. The plaintiffs therefore contended that by way of his examination as DW.2, the 3rd defendant and the said A.Natarajan wanted to 'side track' the issues arising in the suit. The trial Court was of the opinion that though A.Natarajan was unsuccessful in coming on record in the suit, he could not be barred from giving evidence as a witness therein. It was on this basis that the I.A. was dismissed.

The counter-affidavit filed by the 3rd respondent/3rd defendant before this Court indicates that he is espousing the cause of A.Natarajan, who is sought to be examined as DW.2. This is evident from para 8 of the counter, wherein he stated that the claim of DW.2 relates to the plaint schedule property.

As it is an admitted fact that A. Natarajan failed in his attempt to come on record in the suit and that the order passed in this regard attained finality, the trial Court must necessarily bear this fact in mind. It would not be open to the said A.Natarajan to indirectly defeat the said order by enlarging the scope of the suit through his examination as a witness. In this regard, the trial Court must also be wary of A.Natarajan smuggling in his own case, in the capacity of a witness, as he is not a party to the litigation. Any documents sought to be marked by him in evidence would necessarily have to be subjected to detailed scrutiny with this aspect being borne in mind and it would be open to the plaintiffs to raise all such objections as may be available to them in law against the marking of any particular document. The trial Court is no doubt correct in holding that the plaintiffs cannot prevent the defendants from examining any witness of their choice but given the peculiar facts of the present case, the trial Court must exercise necessary care and caution to see that the earlier order passed by it refusing to implead the proposed witness, A.Natarajan, as a party to the suit, is not diluted or defeated by his examination as a witness.

Subject to the above observations, this Court finds no reason to interfere with the order under revision. The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

24th JUNE, 2016

PGS