

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION Nos.2778 & 2802 OF 2016

COMMON ORDER:

1 Both these Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging the orders dated 04.02.2016 passed in I.A.No.2589 of 2015 and I.A.No.2592 of 2015 in O.S.No.325 of 2008 on the file of the Court of the Additional Senior Civil Judge, Eluru of West Godavari District wherein and whereby the trial Court allowed the petitions filed by the respondent-plaintiff one under Section 151 CPC to reopen the matter and another under Order 18 Rule 17 CPC to summon P.W.4 as Court witness for the purpose of cross examination respectively.

2 Since the point involved in both the Civil Revision Petitions is intertwined with each other, these two Civil Revision Petitions are disposed of by this common order.

3 The facts leading to filing of the present Civil Revision Petitions are as follows:

4 The respondent filed O.S.No.325 of 2008 against the petitioner on the file of the Additional Senior Civil Judge, Eluru for declaration and recovery of suit schedule property. The petitioner filed written statement opposing the claim of the respondent. The respondent examined one Samudrala Venkata Chalapathirao as P.W.4 in order to prove the recitals of Ex.A.6 gift deed. The petitioner filed a petition for issuance of summons to P.W.4 to prove the Will dated 22.06.1996 and the same was dismissed.

Subsequently the petitioner filed I.A.No.1647 of 2015 to recall P.W.4, which was allowed. On 13.11.2015 while cross examining P.W.4, the learned counsel for the petitioner confronted him with the Will dated 22.06.1996. Contending that since P.W.4 was examined on her behalf, she did not have the opportunity to cross examine PW.4, the respondent filed I.A.No.2589 of 2015 to reopen the matter and I.A.No.2592 of 2015 to issues summons to P.W.4 to examine him as a court witness for the purpose of cross examination. The petitioner filed separate counters vehemently opposing that the petitions are not maintainable under law. After affording reasonable opportunity to both parties, the trial Court allowed the two applications. Hence the present revisions.

5 The learned counsel for the petitioner challenged the impugned orders on the following grounds: 1) A party to the proceeding is not entitled to file an application under Order 16 Rule 14 CPC seeking to issue summons to any person to examine as a court witness, 2) the respondent has not filed the petition under correct provision of law and the same was not considered by the trial Court in right perspective, 3) the trial Court has not exercised discretionary power vested in it properly, and 4) the impugned orders are not sustainable either on facts or in law, therefore, the same are liable to be set aside.

6 *Per contra*, the learned counsel for the respondent submitted that 1) a party to the proceedings is entitled to file an application under Order 16 Rule 14 CPC to examine any person as a court witness, 2) mere quoting of wrong provision of law by itself is not a

valid ground to dismiss the petition, and 3) the trial Court has exercised discretionary power judiciously basing on sound principles of law, therefore, the Civil Revision Petition is liable to be dismissed.

7 The crucial question that falls for consideration is '*whether a party to the proceeding is entitled to file an application to summon any person to give evidence as a court witness?*'

8 A perusal of the record reveals that the respondent filed an application under Order 18 rule 17 CPC to recall P.W.4 as a court witness for the purpose of cross examination which was allowed. Order 16 Rule 14 CPC postulates that the Court may at its own accord summon as witnesses strangers to suit.

9 The tenor of the affidavit filed by the respondent before the Court below clearly discloses that the respondent filed the petition to summon P.W.4 as a court witness for the purpose of cross examination. It is not in dispute that the respondent filed petition under Order 18 Rule 17 CPC to recall P.W.4, for the purpose of cross examination, as a court witness. The petitioner has taken a specific plea in the counter that the respondent is not entitled to file application under Order 18 Rule 17 CPC to recall P.W.4, who is respondent's own witness, for the purpose of cross examination. The trial Court, after considering the contentions of rival parties, allowed the petition summoning P.W.4 as a court witness. For all practical purposes, the petition filed by the respondent before the trial Court can be treated as an application under Order 16 Rule

14 CPC instead of one under Order 18 Rule 17 CPC. It is a settled principle of law that mere quoting of wrong provision of law by itself is not a valid ground to dismiss the application.

10 The learned counsel for the petitioner strenuously submitted that a party to the proceedings is not entitled to file an application under Order 16 Rule 14 CPC in view of the language employed therein. To substantiate the argument, he mainly stressed on the wording “the court at any time thinks it necessary to examine any person”. If the argument of the learned counsel for the petitioner is accepted, the Court alone can exercise the power suo motu under Order 16 Rule 14 CPC if the exigency so warrants. In order to appreciate the contention of the learned counsel for the petitioner this Court is placing reliance on the following decisions.

11 In **National Insurance Co. Ltd. v. Susru Sea Foods**¹ this Court held that the jurisdiction of the civil Court under Order 16 Rule 14 CPC can even be set in motion by any of the parties to the suit. The same principle is reiterated in **Smt. Malabanti Ratnamala W/o late M.Sudhakar and M.S. Revathi Rani W/o Vijaya Kumar v. Elishamma @ Elizebeth Shobhan Kumar, Smt. Sumana W/o Dunna Praveen and Malathi**².

13 In **Kosuru Kalinga Maharaju v. Kosuru Kaikamma**³ this Court held at para No.5 as follows:

5. It must be said that filing an application under Order 16, Rule 14 of CPC by either party to the suit proceedings

¹ 2005 (1) ALD 464

² 2007 (3) APLJ (HC) 142

³ 1999 (6) ALD 789

seeking to summon any person including a party to the suit and not called as a witness by a party to the suit, is permissible. Order 16, Rule 14 of the Code of Civil Procedure postulates thus:

“Court may of its own accord summon as witnesses strangers to suit:--Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.”

A reading of the above provision would leave no doubt in the mind to say that either party to the suit proceedings can summon a person including a party to the suit who is not called as a witness by a party to the suit, as a witness.”

14 As per the principle enunciated in the cases cited supra, legally there is no bar to file an application under Order 16 Rule 14 CPC by any party to the proceedings to summon any person, to give evidence, as court witness. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to countenance the submission made by the learned counsel for the petitioner that I.A.No.2592 of 2015 is not maintainable under law.

15 The next question that falls for consideration is *‘whether the trial Court is justified in summoning P.W.4, who has already been examined on behalf of the respondent, as a court witness for the purpose of cross examination?’*

16 To substantiate the arguments, the learned counsel for the respondent has drawn the attention of this Court to the ratio laid

down in **Mohd. Hussain Khan v. National Insurance Co. Ltd**⁴ and **P.Bhaskara Rao v. Wolfgang Ormeloh**⁵. These two decisions deal with the circumstances under which the Court may recall and examine the witness.

17 Let me consider the facts of the case on hand in the light of the above legal principle.

18 The respondent examined P.W.4 as her witness to prove the recitals of Ex.A.6 gift deed. Before the trial Court the learned counsel for the petitioner while cross examining P.W.4 confronted him by showing a Will dated 22.06.1996. If there is any ambiguity in the cross examination of P.W.4, which requires certain clarification, the course left open to the respondent is to re-examine the witness with the leave of the Court. For the reasons best known to her, the respondent did not resort to the remedy available to her as contemplated under Section 138 of the Indian Evidence Act on 13.11.2015. As observed earlier, the respondent filed the application under Order 18 rule 17 CPC seeking to recall P.W.4 for the purpose of cross examination. The trial Court allowed the petition on the sole ground that no prejudice would be caused to the petitioner even if the petition is allowed though the exact relief claimed by the respondent falls within the ambit of Order 16 rule 14 CPC. The court, while exercising the jurisdiction under Order 18 Rule 17 CPC, can summon any witness already examined. A perusal of Order 18 Rule 17 clearly demonstrates

⁴ 2011 (3) ALD 174

⁵ 2013 (1) ALD 154

that a witness, who was recalled under this provision, cannot be treated as a court witness. Order 16 Rule 14 CPC deals with summoning any person, to give evidence, as a court witness basing on the application filed by the parties to the proceedings or suo motu by the Court. A witness recalled under Order 18 Rule 17 CPC cannot be equated with the witness summoned under Order 16 Rule 14 CPC. These two provisions operate in two different situations. A witness who was examined on behalf of either party may be summoned for the purpose of further chief examination or further cross examination, as the case may be, if examination of such witness is imperative for proper adjudication of the lis involved in the suit. A party to the proceedings, who examined a person as his own witness, is not entitled to cross examine him is a general principle. Cross examination of a witness by a party who called him as his own witness, is an exception that too with the leave of the court.

19 If the Court permits a party to the proceedings, while exercising discretionary power under Order 16 Rule 14 CPC, to summon any person as a court witness, is entitled to examine and cross examine the witness. This provision is an exception to the general provisions of CPC. The Legislature in its wisdom visualized certain circumstances wherein a party to the proceedings may be compelled to cross examine his own witness to elicit the relevant information or the truth which eventually may throw some light on the core issue involved in the suit. Therefore, the Legislature incorporated Order 16 Rule 14 CPC to facilitate the party to the

proceedings to overcome such an adverse situation due to the reasons beyond his control. In certain circumstances, a party to the proceedings may be forced to examine a person with whom he may not have cordial relation for obvious reasons. He may have apprehension that if that particular person is called as his own witness, he may not speak the relevant facts or truth in his chief-examination for obvious reasons, which ultimately weakens his case, if the veracity of the testimony of that witness is not tested by way of cross-examination. If a party who called a person as his own witness, is permitted to cross examine him, to certain extent he may set right the things by eliciting some admissions by putting suggestions in the cross examination. The underlying object of Order 16 Rule 14 CPC is to protect the interest of the party to the proceedings, who summons a person as his own witness. Wittingly or unwittingly, the respondent filed an application under Order 18 Rule 17 CPC. Allowing of such an application is nothing short of granting a relief under Order 16 Rule 14 CPC. The trial court has lost sight of this vital aspect. The trial Court, without considering the distinction between Order 18 Rule 17 CPC and Order 16 Rule 14 CPC, allowed the petition filed by the respondent.

20 The crucial question that falls for consideration is 'whether a person who was examined as a witness on behalf of one of the parties to the suit can be called as a court witness?'

21 It is not in dispute that the respondent examined P.W.4 as her own witness and the petitioner also cross examined him. The fact remains that by the time of filing of the petition, P.W.4 was

examined as one of the witnesses in the suit. For better appreciation of rival contentions, it is not out of place to extract hereunder Order 16 Rule 14 CPC.

Order XVI. Summoning and Attendance of Witness

14. *Court may of its own accord summon as witnesses strangers to suit:*--Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and *not called as a witness by a party to the suit*, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

22 A careful perusal of the above provision, at a glance, clearly demonstrates that a person can be summoned as a court witness if he is not already called as a witness. There is a legal embargo to summon a person, who was examined as a witness on behalf of one of the parties to the proceedings, as a court witness under Order 16 Rule 14 CPC. This view of mine is fortified by the decision of this Court in **Smt. Malabanti Ratnamala case** (2 supra) wherein this Court at para No.12 held as follows:

“12. A plain reading of Order 16 Rule 14 of CPC shows that it is the sole discretion of the Court to summon any person to give evidence as a witness or to produce any document in his possession, if the Court thinks it necessary. The only prohibition provided under Rule 14 is that such a person should not have been called as a witness by a party to the suit. Though the language of Rule 14 shows that the discretion has to be exercised by the Court at its own motion but not on an application made by a party, the law is well settled that the application, if any, made by the parties can be taken as an information to the Court and in case the Court finds it necessary, a witness can be summoned to give evidence.”

23 The decisions cited by the learned counsel for the respondent are no way helpful to the respondent as those

decisions deal with scope of Order 18 Rule 17 CPC but not Order 16 Rule 14 CPC.

25 While allowing the petitions, the trial Court has not considered the scope and underlying object of Order 16 Rule 14 CPC and also the legal embargo created under Order 16 Rule 14 CPC.

26 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the impugned orders are not sustainable either on facts or in law. Ex facie there is an illegality in the impugned orders, which warrants interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India.

27 In the result, these two Civil Revision Petitions are allowed, setting aside the orders dated 04.02.2016 passed in I.A.No.2592 of 2015 and I.A.No.2589 of 2015 in O.S.No.325 of 2008 on the file of the Court of the Additional Senior Civil Judge, Eluru of West Godavari District. Consequently I.A.No.2592 of 2015 and I.A.No.2589 of 2015 in O.S.No.325 of 2008 stand dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any connected to these Civil Revision Petitions, shall stand closed.

T. Sunil Chowdary, J.

Date: 31-03-2017.

NOTE:

L.R. Copy be marked : YES / NO
(By order)

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