

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1490 of 2017

ORDER :

Heard and perused the impugned docket order, dated 06.02.2017, of the I Additional District Judge, Warangal, and the grounds urged in the revision and other material on record.

2.The revision petitioner is defendant No.1. The revision respondent Nos.1 and 2 are the plaintiffs and revision respondent Nos.3 to 5 are defendant Nos.2 to 4 to the suit O.S.No.27 of 2015. The plaintiffs filed O.S.No.27 of 2015 to direct the defendants to pay an amount of Rs.42,75,000/- with future interest, claiming as defendant No.1 entered into an agreement of sale with them for the sale of the landed properties for valuable consideration and in this regard they issued two cheques to defendant No.2 and encashed by defendant Nos.3 and 4 and later defendant No.1 avoiding to execute the sale deeds saying the subject land was allotted to defendant No.1 under freedom fighter political sufferer category by the then State Government of A.P. and the defendants did not repay or execute any sale deed. Defendant No.1 in his counter contended that he is nothing to do with the alleged encashment of cheques by defendant Nos.3 and 4 and denied about execution of sale deed in favour of the plaintiffs.

3. Defendant No.1 filed memo on 29.11.2016 to cross-examine PW.1 after completion of cross-examination of defendant Nos.2 to 4 as the plaintiffs and defendant Nos.2 to 4 are sailing with each other. The plaintiffs filed reply to that memo contending that earlier defendant No.1 filed I.A.No.235 of 2016 for rejection of the plaint and it was

dismissed and later preferred revision before this Court and the same was also dismissed and to dodge the matter, filed the impugned memo.

4. The trial Court after perusing the material, held that the defendant No.1 has challenged the maintainability of the suit and other defendants are not admitting the oral agreement between the plaintiffs and defendant No.1 and admitted about the issuance of cheques for Rs.24,00,000/-, but for denied payment of consideration to defendant No.1, as such, it could not disclose that defendant Nos.2 to 4 are sailing with the plaintiffs and rejected the memo filed by defendant No.1.

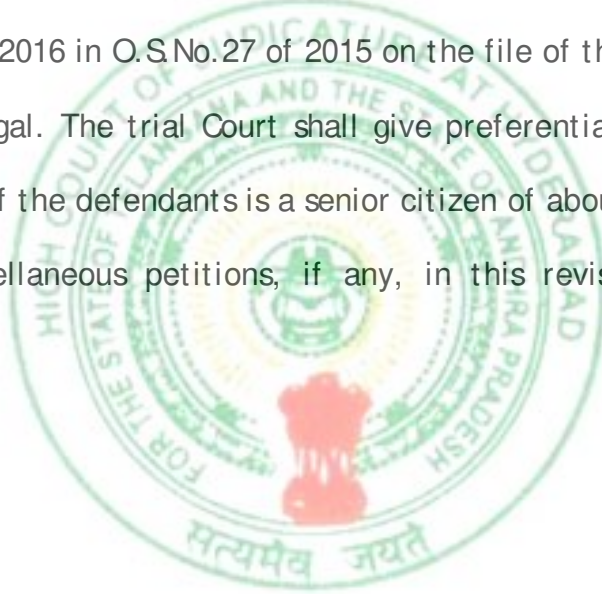
5. It is impugning the same, the present revision is maintained with the contentions that the order of the lower Court is contrary to law and unsustainable and there is a specific pleading in the written statement filed by defendant Nos.2 to 4 that the payment was made by them to the plaintiffs, as such, the defendants 2 to 4 are sailing with the plaintiffs and the trial Court failed to observe that defendant No.1 is not a privy to the alleged transaction between the plaintiffs and defendant Nos.2 to 4, therefore, the trial court should have directed defendant Nos.2 to 4 to cross-examine PW.1 at the first instance before the cross-examination of PW.1 by the plaintiffs. The trial Court also failed to observe that the cheques allegedly issued by the plaintiffs were duly encashed by defendant Nos.3 and 4 and in turn allegedly saying the amount was paid to defendant No.1, as such, an inference can be drawn to that effect and with reference to Order XVIII Rule 1 of C.P.C. which mandates cross-examination of the plaintiff by the sailing or supporting defendants and therefore the rejection of the memo suffers from legal infirmities and prayed to set aside order of the trial Court by allowing the revision.

6. The learned counsel for the revision petitioner reiterated the above grounds in the course of hearing from the submissions. Whereas, the learned counsel for the respective respondents supported the order of the lower Court saying there is nothing to interfere with the impugned order and the revision is liable to be dismissed.

7. In fact, Order XVIII Rule 1 speaks of plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either on point of law or on additional facts alleged by the defendant, the plaintiff is not entitled to any part of relief which he seeks, in which case the defendant has a right to begin. Beyond that there is nothing from that provision to say the right of cross-examination of the D.1 to defer till completion of cross-examination by other defendants of the plaintiff or his witnesses as the case may be. In fact section 135 of the Indian Evidence Act (for short, 'the Act'), speaks the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court. U/ sec.138 of the IE Act, speaks the order of the examination of the witnesses that in the order of examination witnesses shall be first examined in chief and then if the adverse party so desires to cross-examine, then if the party calling him so desires re-examined. Thus, it is the Court discretion in permitting or not the cross-examination of P.W.1 by D.1 after D.2 to D.4. In the case on hand, the contention of the D.1 is that the plaintiff and the D.2 to D.4 are sailing together. The written statement filed by the D.2 to 4 shows payment made to them by the plaintiffs. The cheques allegedly issued by the plaintiffs according to the D.1 were encashed by the D.3 and D.4 among the D.2 to 4. once such is the case the contention in his saying they are

sailing together, once there is a discretion though generally after D.1 cross-examined P.W.1, the other defendants have to do if at all anything additionally or otherwise. Whereas, in the factual scenario when the facts show encashing of cheques by the D.3 and D.4 and it is the D.1's say of the so called amounts by cheques allegedly routed from the plaintiff, particularly the trial Court should have been permitted to cross-examine by the D.2 to D.4 first, the P.W.1 before the cross-examination of P.W.1 by the D.1 instead of dismissing.

8. Having regard to the above, the Civil Revision Petition is allowed by setting aside the docket order, dt.06.02.2017 in Memo Sr.No.2867 of 2016 in O.S.No.27 of 2015 on the file of the I Addl. District Judge, Warangal. The trial Court shall give preferential disposal of the case for one of the defendants is a senior citizen of about 88 years or so. Pending miscellaneous petitions, if any, in this revision, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date:22.12.2017
b/ o.vvr.