

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No. 4601 of 2017

ORDER:

In this revision petition, under Article 227 of the Constitution of India, by petitioner plaintiff, the challenge is to the intermediary order dated 28.07.2017 of the learned XII Additional Chief Judge, City Civil Court, Secunderabad, passed in O.S.No.41 of 2004.

2. I have heard the submissions of *Sri Bapi Raju Nanduri*, learned counsel for the petitioner/plaintiff, at the stage of admission. I have perused the material record.

3. The facts, necessary to be stated as a preface to this order, in brief, are as follows:

The suit is filed for partition of the plaint schedule properties. The 1st defendant is also contesting the suit. There was a prior litigation. In that former suit, O.S.No. 677/95, the 1st defendant in the present suit deposed as PW1. According to the plaintiff herein, the 1st defendant herein, in his said deposition in the earlier suit made an admission that the plaintiff herein is the Son of Mohd. Abdul Khader; but, the 1st defendant is now denying the said admitted relationship. Therefore, the plaintiff sought permission of the trial Court to mark the certified copy of the said deposition of the 1st defendant in the former suit to prove the said admission. The contesting defendants opposed for marking the same. The trial Court having adverted to the provision in Section 33 of the Indian Evidence Act, 1872, (I E Act) held that since the mandatory

conditions postulated in Section 33 of the I E Act are not satisfied, the certified copy of the 1st defendant's deposition in the former suit cannot be marked. Aggrieved thereof the plaintiff filed the present revision petition.

4. In view of the clear facts and the well settled legal position, this Court is of the view that the revision petition can be disposed of at the stage of admission to avoid delay in the disposal of the suit of the year 2004.

5. Be it first noted that in the suit for partition, which is being resisted by the 1st defendant, the case of the plaintiff is that in the former suit O.S.No.677/95 the 1st defendant in the present suit deposed as PW1 and that the 1st defendant herein, in his said deposition in the earlier suit made an admission that the plaintiff herein is the Son of Mohd. Abdul Khader; but, the 1st defendant is now denying the said admitted relationship. Hence, the plaintiff sought permission of the trial Court to mark the certified copy of the said deposition of the 1st defendant in the former suit to prove the said admission.

6. It is apposite to note that the plaintiff is requesting for permission to exhibit the certified copy of the deposition of the 1st defendant in the former suit by not relying upon the provision of Section 33 of I E Act. The plaintiff is relying upon the relevant content of the certified copy of the said deposition as an admission of the 1st defendant but not to impeach merely the credit of the 1st defendant. In that view of the matter the contention of the learned

counsel for the plaintiff is that Section 33 of the I E Act has no application to the present fact situation of the instant case.

7. The learned counsel for the plaintiff submitted that a view which supports the contentions of the plaintiff was also taken by the Division Bench of the High Court of Calcutta in **Ali Mohammad Khan and others v. Sheik Maharaj Bepari and others** [AIR 1921 Cal 781] and also by this Court in **Amit Kumar Jain v. M. Shyamlal Jain** [2015 (1) ALD 224].

8. Further, in **Union of India v. Moksh Builders and Financiers Ltd. And others etc.**,¹ the Supreme Court in broadly identical fact situation held as follows:

Another argument which has been advanced against the admissibility of the aforesaid admissions of defendant No. 3 is that they could be evidence only in terms of Section 33 of the Evidence Act. That argument is also quite untenable because Section 33 deals with statements of persons who cannot be called as witnesses, and does not restrict or override the provisions relating to admissions in the Evidence Act.

It has been held by this Court in **Bharat Singh and Anr. v. Bhagirath** [1966]1SCR606 that an admission is substantive evidence of the fact admitted, and that admissions duly proved are "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions."

¹ AIR 1977 SC 409

From the ratio in the decision it obvious that Section 33 does not apply when the request is to admit in evidence the certified copy of the deposition of a witness in the former suit to place reliance upon the admission in the earlier deposition of the witness. Further, an admission in evidence is substantive piece of evidence of the fact admitted and is admissible in evidence irrespective of whether the party making the admission appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions, as held by the Supreme Court.

9. Thus when the admission of the 1st defendant herein in his deposition in the former suit is being relied upon and is being sought to be put into evidence as an admission of the 1st defendant, the Court below was in error in applying the provision of Section 33 of I E Act and in rejecting the request of the plaintiff to rely upon such an admission made by the 1st defendant in his deposition in the former suit. Hence, this Court finds that the intermediary order, which is impugned, is unsustainable and, therefore, brooks interference.

10. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and accordingly the trial Court is directed to permit the plaintiff to exhibit 'the admission made in the deposition given in the former suit by the 1st defendant in the instant suit' by giving a marking to the relevant portion/admission in the certified copy of the said deposition of the 1st defendant.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

18th September, 2017

Vjl

