

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.2401 of 2017

ORDER:

The challenge in this Civil Revision Petition is the order dt.22.04.2016 in I.A.No.759 of 2016 in OS No.22 of 2013 on the file of II Additional District Judge, Kadapa at Proddatur, whereunder the learned Judge allowed the petition filed by the respondent/plaintiff under Order XVIII Rule 3A CPC seeking permission to examine her husband in the first instance in the suit giving evidence as a witness and reserving her right to examine herself at a later stage, if necessary.

2) The respondent/plaintiff filed O.S.No.22 of 2013 seeking specific performance of sale agreement-cum-GPA dt.03.08.2010; cancellation of sale deed dt.14.06.2012 executed by D.1 in favour of D.2 and for permanent injunction.

a) When the matter came up for trial, the respondent/plaintiff filed I.A.No.759 of 2016 stating that her husband was looking after her affairs and he was dealing with her property transactions and the suit property was purchased by her from D.1 and in that context her husband dealt with the said transaction on her behalf and he knows the details of the suit transaction and he also issued instructions to her Advocate on her behalf to file the suit and therefore, her husband may be permitted to depose on her behalf in the first instance reserving her right to examine herself at a later stage, if necessary.

b) The petitioner/2nd defendant filed counter and opposed the petition mainly on the ground that as per plaint averments she pleaded herself as the GPA holder of the 1st defendant for administration of the property and therefore, she had no right to seek examination of her husband to depose on her behalf. Further, there was no pleading in the plaint to the effect that petitioner's husband gave instructions to her Advocate on her behalf to file the suit.

c) By the impugned order, the trial Court allowed the petition observing that since the proposed witness acted on her behalf in getting the suit transaction, she can as well examine her husband as first witness and she could examine herself at later stage as per Order XVIII Rule 3A CPC.

Hence the CRP at the instance of 2nd defendant.

3) Heard arguments of Sri V.R.Reddy Kovvuri, learned counsel for petitioner and Sri M.S.P. Kamaraju, learned counsel for respondent.

4) The provision which is germane for discussion is Order XVIII Rule 3A CPC, which reads thus:

“3A. Party to appear before other witnesses.- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

a) Law does not compel a party to a suit or other civil proceedings to necessarily examine himself as a witness. The party by examining his

witnesses can as well prove his case. Ofcourse, if certain facts are to the exclusive knowledge of the party and if he does not enter the dock and only examines his witnesses, the Court may, depending upon the facts and circumstances of the case, draw an adverse inference against him, which is altogether a different aspect. Therefore, there is no legal compulsion that a party must necessarily examine himself as a witness to prove his case. However, if a party proposes to examine himself as a witness, then Order XVIII Rule 3A CPC ordains that he shall so appear before any other witness on his behalf has been examined. This general rule has an exception to the effect that the Court for the reasons to be recorded, permit him to appear as his own witness at a later stage. The reason for introduction of Order XVIII Rule 3A CPC in the year 1976 on the recommendation of the law commission was to plug the loopholes being observed. Some parties try to examine themselves as witnesses at a later stage only for the purpose of filling the gaps. To remedy the said malady, Order XVIII Rule 3A CPC was introduced. Thus the object of this provision was to prevent a party from covering the loopholes in the evidence of other witnesses examined by him earlier. However, if the Court is satisfied that the intention of the party in not examining himself at the first instance was not with an intention to plug the loopholes in the evidence of his witnesses, but for valid reasons, the Court can permit a party to examine himself at a later stage. A question had arisen as to whether a party who wishes to examine his witnesses first and himself at a later stage shall seek permission of the Court in terms of Order XVIII Rule 3A CPC at the beginning of the evidence on his behalf or at a

later stage also. Answering this question, a Division Bench of this Court in *Aitipamula Shivalingam and another vs. Aitipamula Chinna Narsamma*¹, held thus:

“Thus, it is clear that a party, who wishes to examine himself/herself at a later stage, need not seek permission of the Court at the threshold itself. It is sufficient if a petition is filed as required under the provisions before the Court and the Court, if satisfied with the reasons explained in the affidavit filed in support of the petition, could allow the application/petition while recording its reasons.”

b) In the backdrop of above law, when the case on hand is perused, at the commencement of trial itself, the respondent/plaintiff filed I.A.No.759 of 2016 seeking permission of the Court to examine her husband in the first instance in the suit for giving evidence as a witness and reserve her right to examine herself at a later stage if necessary. The reason shown by her was that her husband was dealing with her property transactions including the suit transactions and in fact, he issued instructions to her Advocate on her behalf to file the suit. The trial Court considering that the information confided by her with her husband was a privileged communication and he was a competent witness, allowed the petition. It is true that in the plaint there is no specific averment to the effect that plaintiff's husband was looking after her affairs including the suit transaction. However, on that ground her request could not be turned down. Therefore, I find no illegality or perversity in the order impugned. The decision in *G.Gayathri and*

¹ 1998(2) ALD 241 = 1998 (2) ALT 7

*another vs. M.Bhagyalakshmi and others*², relied upon by the petitioner can be distinguished on facts. In that case, the first petitioner sought to examine her husband who was the second petitioner, as if he was the plaintiff No.1 and not as a mere witness. The first petitioner did not seek permission to examine her husband as an independent witness but to depose on her behalf as if he were the plaintiff No.1 and hence the petition was dismissed by the trial Court as well as the High Court. However in the instant case, the respondent/plaintiff is only seeking permission of the Court to examine her husband as a witness on her behalf which is evident from the petition in I.A.No.759 of 2016. She has not sought for to substitute him for herself as plaintiff. On the other hand, she also seeks permission to reserve her right to examine herself at a later stage if need be. Hence, the cited decision (2 supra) has no application.

5) In the result, this Civil Revision Petition is dismissed. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 28.08.2017

scs

U. DURGA PRASAD RAO, J

² 2009 (1) ALD 421