

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.5953 of 2016

ORDER

Heard both sides and perused the grounds of revision and impugned order of the lower Court dt. 01.11.2016 in the suit docket order(O.S.No.394 of 2007). In the suit, originally there are two defendants of whom the D.1 died by his legal heirs D.3 to D.8. There are different contests raised by D.1 estate represented by the D.3 to D.8 on one set and D.2 on another set. In the course of trial from the evidence of P.W.1, D.Ws.3 to 8 as legal heirs of D.1, chosen to cross-examine because D.1 admitted the entire suit claim of the plaintiff. It is therefrom the impugned docket order passed by the lower Court with observation para-2 and 3 which are as follows:-

*Perusal of record shows that defendants 3 to 8 are the legal heirs of deceased defendant No.1. Deceased defendant No.1 had filed a written statement admitting the claim of the plaintiff, therefore his (Defendant No.1) case was not adverse to the case of plaintiff. The right of cross examination vests only with an adverse party. Defendants 3 to 8 being the legal heirs of deceased defendant No.1 should step into the shoe of deceased defendant No.1 only and they cannot travel beyond the pleadings taken by the deceased party. In the instant case, defendant No.1 filed written statement through an Advocate namely Sri Basa Satyanarayana and after his death the legal heirs of defendant No.1 i.e. defendants 3 to 8 engaged another counsel namely Sri E.Kondal Reddy and the counsel for defendants 3 to 8 intends to cross-examine P.W.3. The defendant who admits plaintiff's claim cannot be permitted to cross examine the plaintiff as reported in Karumanchi Subba Rao Vs. Yalagadda Venkatappaiah and others reported in AIR 1978 AP 193.*

*In view of the above reasons, the objection of the plaintiff is upheld and defendants 3 to 8 are not permitted to cross-examine P.W.1.*

2. There is no dispute on the proposition referred by the lower Court including on the correctness of law laid down by this Court way back in K.Subba Rao supra. It is also clear from reading of Section 58 of the Indian Evidence Act that from the admitted facts nothing to be proved. Thereby the trial Court not allowed the defendants, having admitted, to put any questions by cross-examination consequently filed purported of the expression of the K.Subba Rao supra. However, the fact remains from the perusal of the very written statement of D.1 insofar as para-7 allegations of the plaint from what he stated as follows:-

*That the allegations made in para 7 of the plaint that this Defendant has executed some Registered sale deeds in favour of 1) Abid Bin Usman Jabri, 2) Awad Bin Usman 3) Chenna Madhavuni Dharmender Raju, 4) Smt. Nagula Laxmi, 5) Lingampalli Balagoud by putting Sy.No.1420/ A belonging to the family of the Defendant and showing the land of the plaintiff in S.No.1420/ B i.e. Suit Sy.Nos. are false, hence denied as there was no such possibility in the circumstances that this Defendant and his younger brother did not get any land to their shares in Sy.No.1420/ A and entire land in its fell to the share of their sisters and the same is clear from the decree passed in O.S.No.66 of 1989 dated 05.07.1990 on the file of the Senior Civil Judge's Court, Karimnagar.*

No doubt, in para-6 in relation to the plaint para-8 averments, it is also admitted about compromise decree in O.S.No.66 of 1989. Thus, insofar as registered sale deeds referred in para-7 of the written statement of D.1 concerned, that is a disputed fact if at all D.3 to D.8 to cross-examine P.W.1 to that extent only and nothing beyond.

3. Accordingly and in the result, the revision is disposed of to the extent supra. Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:28.12.2017  
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