

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.322 OF 2017

ORDER:

This Civil Revision Petition is directed against the order dated 3.1.2017 in I.A. No.516 of 2016 in O.S. No.560 of 2007 on the file of Principal Junior Civil Judge, Bhimavaram, West Godavari District.

2. The petitioner herein is the plaintiff in the suit.
3. He filed the suit for perpetual injunction against the respondents 1 to 4 on the basis of Registered Settlement Deed dt. 6.12.2016 executed by her husband V. Satti Babu in her favour and claiming to be in possession of the property on the basis of the said Settlement Deed.
4. The 3rd respondent herein/1st defendant filed a written statement claiming that the suit schedule property belonged to one V. Satyavathi, who is the mother of the respondents 1 & 2, that he was a tenant of the said Satyavathi, that she executed a Will dt. 8.8.2006 in favour of the respondents 1 & 2, that she died on 15.8.2006, and on her death they inherited the property. He further contended that a Sale Deed dt. 29.10.2007 was executed by the respondents 1 & 2 in his favour. He denied the possession of the petitioner and stated that the documents relied upon by the petitioner are concocted.
5. The respondents 1 & 2 /defendants 2 & 3 adopted the written statement of 3rd respondent/defendant No.1.
6. The 4th respondent also filed written statement stating that he has nothing to do with the plaint schedule property and was unnecessarily impleaded in the present suit.

7. After the issues were framed, the trial commenced and the evidence of the petitioner was closed.

8. Thereafter, the 3rd respondent/1st defendant examined himself as D.W.1 and marked the Will (Ex.A-8) executed by Satyavathi. The 4th respondent/4th defendant, who scribed Ex.A8 Will, was then examined by the 3rd respondent/1st defendant.

9. Thereafter, chief-examination affidavit of 2nd respondent/3rd defendant was sought to be filed. This was objected to by the petitioner on the ground that no permission under Order 18 Rule 3A of C.P.C. was obtained.

10. The Court returned the said affidavit of 2nd respondent/3rd defendant on the ground that the application under Order 18 Rule 3A of C.P.C. ought to have been filed and it was not filed.

11. Thereafter, I.A. No.516 of 2016 was filed by the respondents 1 & 2/defendants 2 & 3 seeking permission to allow the 2nd respondent/defendant No.3 to be examined as D.W.5 invoking Order 18 Rule 3A of C.P.C. This application was allowed by the Court below on 3.1.2017 in spite of an objection being raised by the petitioner.

12. Challenging the same, this Civil Revision Petition is filed.

13. Counsel for the petitioner contends that once the 4th defendant/4th respondent was examined as D.W2, defendants 2 & 3 cannot be allowed to lead evidence.

14. According to him, it would allow the parties to fill up the lacunae in the evidence of witness who has been examined earlier, that this is prohibited, and that Order 18 Rule 3A of C.P.C. is intended for the said purpose.

15. Order 18 Rule 3A of C.P.C. states that 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.

16. From the facts stated in the petition, it is clear that the 3rd respondent/1st defendant had set up Ex.A8 Will which has been scribed by the 4th respondent/4th defendant. Therefore, after the 3rd respondent/1st defendant examined himself, in order to prove the Will he examined 4th respondent/4th defendant.

17. There is no provision in Civil Procedure Code which mandates that the defendants should examine themselves in the sequence mentioned in the cause-title in the plaint.

18. In the instant case, to prove the case of the 3rd respondent/1st defendant, 4th respondent/4th defendant has been examined. Thus, the 4th respondent was a witness for the 3rd respondent.

19. Respondents 1 & 2 are defendants 2 & 3 in the suit. After their turn came they are entitled to lead evidence and the 1st defendant/3rd respondent filed affidavit in lieu of chief-examination. Their evidence cannot be shut out on the ground that they filed memo adopting the written statement of the 3rd respondent/1st defendant.

20. I do not see how Order 18 Rule 3A of C.P.C. is attracted in a situation like the instant case where there is more than one defendant and one of the defendants is also a witness to a fact which is being set up by the 1st defendant.

21. In my considered opinion, Order 18 Rule 3A of C.P.C. is not applicable to the facts of the case and respondents 1 & 2 need not obtain any permission from the Court to lead evidence after conclusion of the evidence on the side of the 3rd respondent/1st defendant.

22. Therefore, I am of the opinion that there is nothing illegal or improper in allowing the 2nd respondent/defendant No.3 to be examined as D.W.5 after the evidence of 4th respondent is concluded.

23. Civil Revision Petition is, accordingly, dismissed. No costs.

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

Dt. 06.02.2017
gbs



M.S. RAMACHANDRA RAO,J