

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

+ C.R.P.No.5665 of 2017

% Date: 15-12-2017

BETWEEN:

Chaganti Lakshma Reddy, S/o. Koti Reddy,
R/o.Nunna, Vijayawada Rural Mandal,
Krishna District, Vijayawada D.M.C.

... Petitioner/Defendant No.1

Vs.

1. Chaganti Siva Rami Reddy, S/o. Chaganti lakshma Reddy, Occ:
Employee, at present resident of Bangalore, rep. by his Power of
attorney Agent Kolli Pitchi Reddy, S/o. Veera Reddy, R/o. Veerla
palam,H.No.2-110, Main Bazar, Duggirala Mandalam, Tenali Taluk,
Guntur District-522 305.

... Respondent/Plaintiff

2. Dr. Chaganti Harsh Reddy, S/o. Changanti Lakshma Reddy, Occ:
Doctor, Royal Residency, Flat No.501, Moghalrajapuram,
Vijayawada, Krishna District.

... Respondent/defendant No.2.

!Counsel for the Appellants : Mr. M. Radhakrishna

^ Counsel for the Respondent No.1 : Mr. G. Narendra Raj

^ Counsel for the Respondent No.2 : Mr. P. Rajasekhar

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> HEAD NOTE:

? Cases referred

- 1) 2008 (3) ALT 724
- 2) 2004 AIR SCW 1842
- 3) AIR 1971 SC 996
- 4) 2005 (5) SCJ 519
- 5) (2015) 5 SCC 423

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.5665 of 2017

ORDER:

The 1st defendant in a suit for partition has come up with the above revision, challenging an order passed by the trial Court allowing an application filed under Order XVIII Rule 3 permitting the plaintiff to lead rebuttal evidence on Issue No.1 after the completion of the defence evidence.

2. Heard Mr. M. Radhakrishna, learned counsel for the petitioner and Mr. G. Narendra Raj, learned counsel appearing for the 1st respondent/plaintiff.

3. The 1st respondent herein filed a suit in O.S.No.181 of 2007 on the file of the Additional District Judge, Vijayawada for partition and separate possession of his 1/3rd share in suit 'A' and 'B' schedule properties. The claim of the 1st respondent/plaintiff in his plaint was that he was the son of the petitioner/1st defendant herein through his first wife; that after the death of the 1st respondent/plaintiff's mother, the petitioner/1st defendant married another lady and in the said wedlock, the 2nd respondent herein (2nd defendant in the suit) was born; that the property described in plaint 'A' schedule was allotted to the share of the petitioner/1st defendant in a partition that took place between the petitioner and his two brothers; that plaint 'A' schedule property is a fertile land, from the income out of which, plaint 'B' schedule property was purchased; that the plaint 'A' and 'B' schedule properties are joint family properties in which he has a right to the extent of 1/3rd and that therefore he was filing a suit for partition.

4. The father and the step son, who are defendants 1 and 2 in the suit, filed their written statements, after which the trial Court framed three issues for consideration. The issues were –

1. Whether the plaintiff is entitled for partition of Plaint A & B schedule property as prayed for?
2. Whether the plaintiff is entitled for future mesne profits of Plaint A & B schedule properties?
3. To what relief.

5. Thereafter, the trial commenced and the 1st respondent/plaintiff examined himself as PW.1 and marked 20 documents as Exs.A.1 to A.20. The Power Agent of the 1st respondent/plaintiff was examined as PW.2.

6. Thereafter, the 1st respondent/plaintiff took out an application in I.A.No.1284 of 2017 under Order 18 Rule 3 seeking permission to lead rebuttal evidence after the completion of the evidence on the side of the defendants. This application was allowed by the trial Court forcing the petitioner/1st defendant to come up with the above revision.

7. In order to understand the scope of the dispute raised in this revision, it may be relevant to take note of the scheme of Order XVIII of the Code. Order XVIII Rule 1 of the Code speaks about the right to begin. In every suit, the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts the plaintiff is not entitled to any part of the relief. In cases where the defendant admits the facts alleged by the plaintiff and claims on a point of law or on an additional fact that the plaintiff is not entitled to the relief, the defendant will have the right to begin.

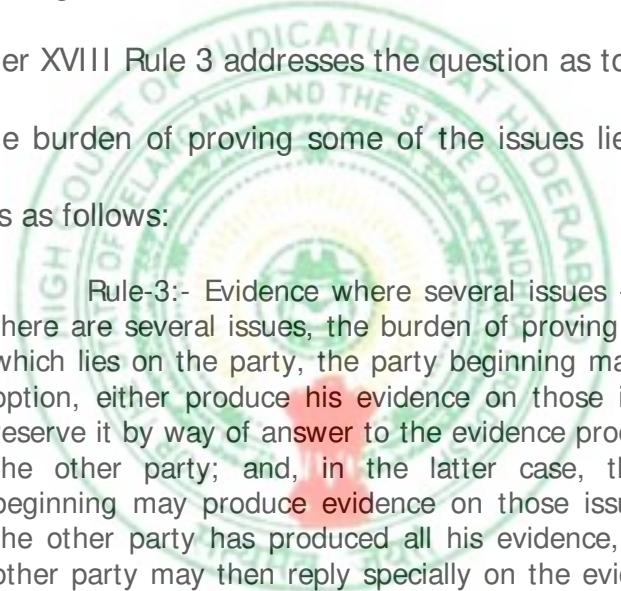
8. In simple terms, the right to begin incorporated in Order XVIII Rule 1 is what *onus probandi* is. Once the person on whom the onus to prove a fact lies, goes to the witness box tenders evidence, then the

burden of proof would shift to the other party. This is where the distinction between onus and burden lies.

9. Once the party on whom the right to begin lies is determined, he will then be obliged to produce his evidence in terms of Order XVIII Rule 2. Under Order XVIII Rule 2(1), the party having the right to begin should state his case and produce his evidence. After he has produced his evidence, the other party, in terms of Order XVIII Rule 2(2), should state his case and produce his evidence. But notwithstanding anything contained in the Rule, the Court may permit any party to examine any witness at any stage.

10. Order XVIII Rule 3 addresses the question as to what should be done when the burden of proving some of the issues lies on one party.

The Rule reads as follows:



Rule-3:- Evidence where several issues -- Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

11. The option given to a party is actually available only where there are several issues, the burden of proving some of which alone lies on him. The option available under Rule 3 is either to produce his evidence on the issues with respect to which the burden lies on him or to reserve it by way of an answer to the evidence produced by the other party.

12. The first pre condition for invocation of Order XVIII Rule 3 is that there must be several issues, the burden of proving some of which

lies on the party beginning. The second important aspect of Order XVIII Rule 3 is that it is only an option given to a party.

13. In the case on hand, it is fairly conceded by the learned counsel appearing for the respondents that there were no several issues, the burden of proving some of which alone was on the plaintiff. I have already extracted the issues framed by the trial Court. The issues 1 and 2 framed by the trial Court constitute a composite whole. In other words, there was virtually only one issue and the plaintiff had elected to go to the witness box first by exercising his right to begin under Order XVIII Rule 1.

14. There was no other issue before the trial Court, in respect of which the burden was on the defence. It is only in cases where the burden of proof in respect of some issues were on the plaintiff and in respect of the other issues were on the defence that the plaintiff can invoke Order XVIII Rule 3 to confine his evidence in the first instance to the issues with respect to which he has a burden, and to reserve his right to produce rebuttal evidence in respect of issues for proving which the burden was on the defendant. Therefore, the 1st respondent/plaintiff, in the case on hand, could not have invoked Order XVIII Rule 3 at all, as the most essential requirement of Order XVIII Rule 3, viz., (a) the existence of several issues and (b) the burden of proving some of which lies on the other party, were not there.

15. Relying upon a decision of a learned Single Judge of this Court in K. Anjamma @ Anjali Devi v. K. Sudarshan Reddy¹, it was contended by the learned counsel for the 1st respondent/plaintiff that in a suit for partition, the distinction between the plaintiff and the defendant gets blurred. Therefore, it is contended by the learned counsel for the 1st

¹ 2008 (3) ALT 724

respondent/plaintiff that there was nothing wrong in the order of the trial Court.

16. If the above logic is accepted, the 1st respondent/plaintiff could have made an endorsement and allowed the petitioner/1st defendant to go to the witness box first. The 1st respondent/plaintiff exercised his right to begin under Order XVIII Rule 1. Once he has gone to the witness box, he cannot withdraw half way through, with liberty to come back again by invoking Order XVIII Rule 3.

17. Interestingly, it was conceded by the learned counsel for the 1st respondent/plaintiff that in this case there were no several issues and that Order XVIII Rule 3 had no application. But still the learned counsel for the 1st respondent/plaintiff, placing reliance upon the decision of the Supreme Court in *Shipping Corporation of India, Ltd., v. Machado Brothers*², contended that wherever there is no specific provision for the grant of a relief in the Code, the Court can invoke Section 151. But the said argument has to be stated only to be rejected. Whenever the plaintiff chooses to lead evidence first and to reserve his right to go back to the witness box after the defendant completed his evidence, he has to invoke Order XVIII Rule 3 alone. When there is a specific provision in Order XVIII Rule 3, the plaintiff cannot bypass the same and claim that there is no specific provision and that he could fall back upon Section 151 CPC.

18. Inviting my attention to the decision of the Supreme Court in *The State Bank of Travancore v. Arvindan Kunju Panicker*³, the learned counsel for the 1st respondent/plaintiff contended that a Hindu family is presumed to be joint, unless the contrary is established. We do not know why we should go into the said question. If it was the claim of

² 2004 AIR SCW 1842

³ AIR 1971 SC 996

the 1st respondent/plaintiff that his pleading itself was sufficient to hold the suit properties as joint family properties, he need not have gone to the witness box and examined two witnesses. Accepting that the onus was on him, he exercised his right to begin under Order XVIII Rule1. Therefore, today he cannot go back to the aforesaid proposition.

19. Relying upon the Supreme Court decision in Salem Advocate Bar Association, Tamil Nadu v. Union of India⁴, the learned counsel for the 1st respondent/plaintiff contended that rules of procedure are only handmaid of justice, and that therefore, the Courts should interpret the Rules only to advance the cause of justice. We do not know how the said principle could be invoked in this case. We are concerned in this case with the question whether the plaintiff, after having chosen to examine two witnesses, can seek the liberty of the Court to come back to the witness box again after the defendant completed his evidence, for answering this question. Therefore the said decision has no application.

20. Drawing my attention to the decision of the Supreme Court in Radhey Shyam v. Chhabi Nath⁵, it is contended by the learned counsel for the 1st respondent/plaintiff that the jurisdiction of this Court in a revision under Article 227 is circumscribed. There can be no quarrel with the said proposition. But when admittedly the plaintiff invokes a provision of law inapplicable to his case and gets permission to withdraw himself from the witness box with liberty to appear, and the Court falls into a trap by granting the relief, the same would tantamount to an error of jurisdiction, that is liable to be corrected by this Court. The revisional jurisdiction of this Court under Article 227 would certainly be applicable to cases of this nature, where the Court grants a relief on the basis of a

⁴ 2005 (5) SCJ 519

⁵ (2015) 5 SCC 423

provision of law that is admitted before the High Court to be inapplicable to the situation on hand.

21. Therefore, the Civil Revision Petition is allowed and the impugned order is set aside. It is open to the 1st respondent/plaintiff to continue and complete the evidence on his side and thereafter it is up to the defendants to lead evidence.

22. As a sequel, miscellaneous petitions pending in this revision, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

15th December, 2017.
Js

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.5665 of 2017
(per VRS, J.)



15th December, 2017.

Js.