

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

C.R.P.No.3713 of 2018

Between:

R. Omnarayan Khandelwal

..... Petitioner/JDR.No.2/D.2

And

Maddineni Sravan Kumar and others.

....Respondents/JDR Nos.3 to 6/D.2 to 5.

DATE OF JUDGMENT PRONOUNCED: 28-09-2018

SUBMITTED FOR APPROVAL:

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

GUDISEVA SHYAM PRASAD, J

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CIVIL REVISION PETITION No.3713 of 2018****ORDER :**

This Civil Revision Petition is preferred by the petitioner aggrieved by the docket order dated 27.02.2018 in E.P.No.10 of 2016 in O.S.No.206 of 2007 passed by the Senior Civil Judge, Khammam.

The petitioner is Judgment Debtor No.2/Defendant No.2, respondent No.1 is the plaintiff/Decree holder, respondent No.2 is Judgment Debtor No.1/Defendant No.1 and respondent Nos.3 to 6 are Judgment Debtor Nos.3 to 6/defendant Nos.3 to 6 in the suit O.S.No.206 of 2007. For the sake of convenience, the parties are referred to as they were arrayed in the suit O.S.No.206 of 2007.

The suit in O.S.No.206 of 2007 was filed by the plaintiff for declaration of title and perpetual injunction and for a direction to defendant Nos.3 to 5 to cancel ROR Pass Book and title deeds issued to defendant No.1 and to delete the names of defendant Nos.1 and 2 and incorporate the name of the plaintiff in the Revenue records in respect of the suit schedule property. The said suit was decreed vide judgment and decree dated 31.10.2013 in O.S.No.206 of 2007. The appeal suit in A.S.No.106 of 2013 filed against the said

judgment and decree dated 31.10.2013 in O.S.No.206 of 2007 by defendant Nos.1 and 2 was dismissed vide judgment and decree dated 31.01.2014 in A.S.No.106 of 2013 passed by the I Additional District Judge, Khammam. Aggrieved by the same, defendant Nos.1 and 2 have preferred S.A.No.161 of 2014 before this Court along with an application in SAMP.No.416 of 2014 seeking stay of all further proceedings. In the said application in SAMP.No.416 of 2014 in S.A.No.161 of 2014, initially this Court granted *status quo* order and subsequently it was vacated vide order dated 25.09.2014. Challenging the said order dated 25.09.2014 in SAMP.No.416 of 2014 in S.A.No.161 of 2014, defendant Nos.1 and 2 have preferred SLP (Civil) No.28100 of 2014 before the Supreme Court and the same was dismissed vide order dated 15.12.2014. Thereafter, the plaintiff has filed Execution Petition in E.P.No.10 of 2016 in O.S.No.206 of 2007 seeking execution of the decree against the defendants. When E.P.No.10 of 2016 came up for enquiry, vide the impugned docket order dated 27.02.2018 the Executing Court noted the proceedings as under:

“PW.1 is present and he is sworn in for the purpose of continuation of cross-examination.

Cross-examination:- No representation for Government Pleader upto 03.19 p.m. J.Dr.No.3 to 5 called absent. Further cross-examination of PW.1 by Government Pleader for J.Dr.No.3 to 5 is closed.

At this stage the counsel for J.Dr.No.2 represented that he may be permitted to cross-examine PW.1. The D.Hr. seeks relief against J.Drs.3 to 5 only. No relief is

sought for against J.Dr.No.2. Though the counsel for J.Dr.2 filed Vakalat and counter I am of the view J.Dr.2 is not all entitle to cross-examine PW.1. The relief sought for in the petition is as follows:

Hence the D.Hr./Plaintiff prayed that the Hon'ble Court may be pleased to necessary to send the J.Drs/Defendants No.3 to 5 by detention in the civil prison and attachment of their property under Order 21 Rule 32 of Civil Procedure Code (Act V of 1908) 1908 in the interest of justice.

By mere filing vakalat and counter the J.Dr.No.2 cannot get right of cross-examine this witness. As such the Court refused to permit the counsel for J.Dr.2 to cross-examine this witness.”

Aggrieved by the said docket order, the petitioner/defendant No.2 has preferred this Civil Revision Petition.

Heard learned counsel for the petitioner/defendant No.2 and the learned counsel for respondent No.1/plaintiff. Perused the material on record.

Learned counsel for the petitioner submits that Judgment Debtor Nos.1 and 2 along with other J.Dr.Nos.3 to 6 were shown as parties in E.P.No.10 of 2016. In the said E.P., the Decree Holder/Plaintiff filed his chief affidavit and opportunity was given to the defendants/J.Dr.Nos.3 to 5 to cross-examine the plaintiff. The petitioner/J.Dr.No.2 was not given opportunity to cross-examine the witness and the matter was posed for respondents evidence on 12.03.2018. Therefore, the petitioner sought for an opportunity to cross-examine PW.1 in the Execution Petition.

In this regard, learned counsel for the petitioner/J.Dr.No.2 referred to the order passed by the Executing Court, which is extracted above, wherein it is stated that Decree Holder has sought for relief against J.Dr.Nos.3 to 5 by detention in the civil prison and attachment of their property under Order 21 Rule 32 of C.P.C. and, therefore, the right to cross-examine PW.1 by the petitioner/J.Dr.No.2 was denied by the Court below.

On the other hand, learned counsel for respondent No.1/plaintiff submits that the Court below has passed the decree dated 31.10.2013 in O.S.No.206 of 2007 and the same has become final and there is no stay granted by this Court in S.A.No.161 of 2014 filed by defendant Nos.1 and 2 and, therefore, respondent No.1/D.Hr./plaintiff is entitled for execution of the decree. It is further submitted that as Judgment Debtor Nos.1 and 2 are not necessary parties to the Execution Petition, they need not be given any opportunity to cross-examine PW.1. It is also submitted that no enquiry is contemplated under Order 21 Rule 32 C.P.C., by the Executing Court in execution of a decree passed in an injunction suit.

The order under revision dated 27.02.2018 reveals that the counsel for petitioner/J.Dr.No.2 represented to the Court below to permit him to cross-examine PW.1, but the Court

below refused to give him opportunity to cross-examine the witness on the ground that the plaintiff/Decree holder has sought for relief against J.Dr.Nos.3 to 5 only and no relief was sought against J.Dr.No.2.

There is no dispute with regard to the filing of E.P.No.10 of 2016 against Judgment Debtor Nos.1 to 6. But, the relief was claimed against Judgment Debtor Nos.3 to 5 for their detention in civil prison and for attachment of their property under Order 21 Rule 32 C.P.C. Apart from other Judgment Debtors, the petitioner/J.Dr.No.2 is also a party to the execution proceedings. When the Executing Court is conducting an enquiry, the petitioner/J.Dr.No.2 also must have been given opportunity to cross-examine the witness PW.1. However, no such opportunity was given to J.Dr.No.2.

The contention of the learned counsel for respondent No.1/plaintiff that there is no need for the Executing Court to conduct enquiry as contemplated under Order 21 Rule 32 C.P.C. by giving an opportunity to J.Dr.No.2, as no relief claimed against him cannot be sustained. It is pertinent to note that when Execution Petition is filed against the respondents/J.Dr.Nos.1 to 5, all the respondents must be given an opportunity to cross-examine the witnesses.

Learned counsel for the petitioner/J.Dr.No.2 submits that J.Dr.Nos.3 to 5 have already cross-examined PW.1 and

now the J.Dr.No.2 is seeking an opportunity to cross-examine the witness.

In view of the foregoing reasons and in view of the provision under Section 137 of the Indian Evidence Act, 1872, an opportunity must be given to a party to cross-examine the witness when he is arrayed as opposite party, whether a proforma party or a necessary party. Therefore, the Court below is directed to give an opportunity to the petitioner/J.Dr.No.2 to cross-examine PW.1.

In the result, the Civil Revision Petition is allowed, while setting aside the docket order dated 27.02.2018 in E.P.No.10 of 2016 in O.S.No.206 of 2007, the Court below is directed to give an opportunity to the petitioner/J.Dr.No.2 to cross-examine PW.1. No order as to costs.

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

GUDISEVA SHYAM PRASAD, J

28.09.2018.

NOTE: L.R. Copy be marked.
(B/O)
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.3713 of 2018



28.09.2018
Msr