

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.94 of 2014

ORDER:

This Civil Revision Petition is filed questioning the order dated 21.11.2013 in EA No.249 of 2013 in EA No.186 of 2010 in EA No.1087 of 2009 in OEP No.263 of 2008 in OS No.758 of 2000 passed by the I Additional Junior Civil Judge, Tirupati.

EA No.249 of 2013 is filed by the first respondent in the claim petition seeking a permission to adduce her evidence as RW.3 and to receive her chief affidavit in lieu of actual examination in the Court. The said application was opposed by the revision petitioner who is the second respondent. Despite the same, the application was allowed. Questioning the same, the present CRP is filed.

Despite notice, the respondents did not appear. This Court has heard Sri S. Subba Reddy, learned counsel for the revision petitioner/second respondent in the lower Court.

The contention of the learned counsel for the revision petitioner/second respondent is that the applicant/deGREE holder cannot give evidence at this stage as i) provisions of Order XVIII Rule 3A CPC are not satisfied and she did not obtain permission from the court to give evidence; ii) in addition, the learned counsel

states that the witness would cover up the evidence that has already been introduced and has been recorded in the case. The learned counsel relied upon **Y. Prabhakara Rao v. P.S. Anil Kumar**¹, **D. Dhanalaxmi v. Sannadhi Prabha Krishna**²; and **Namala Govindu v. B. Lakshmananna**³ and argued that the applicant/deGREE holder before the lower Court should not be allowed to give evidence.

This Court after examining the above cited judgments notices that there is strictly no issue in **D. Dhanalaxmi**'s case (2 supra). In that case, the first defendant filed a memo earlier stating that she has no evidence and that later she would lead evidence after the sixth defendant gave evidence. Therefore, the question was about the reopening of the suit at the stage of further evidence. In **Namala Govindu** (3 supra), a learned single Judge of this Court dealt with an issue about the examination of witnesses under Order XVIII Rule 3-A C.P.C. and the order of examination of witnesses. In addition, relying on the judgment of a learned single judge of this Court in **Y. Prabhakara Rao** (1 supra), the learned counsel argued that the application was filed only to cover up the gaps in the evidence. However, in a

¹ 2013 (5) ALD 319

² 2002 (6) ALT 265

³ 2008 (1) ALD 268

Division Bench decision reported in A. **Shivalingam v. A. Chinna Narsamma**⁴, it was held that if there are sufficient reasons, a party can be examined later also.

A perusal of the facts of the case reveals that the first respondent was set *ex parte* on 20.06.2013. On 21.06.2013 the evidence affidavit of the revision petitioner was affirmed and filed. The cross-examination of the second respondent took place on 16.07.2013. The present application was filed on 14.08.2013 along with the affidavit-in-chief of the proposed witness. The applicant/decreed holder is also a lady. It is her case that the case was posted to 20.06.2013 and on that day she could not go to the Court due to some gynecological problem and she could not adduce evidence.

Therefore, from a reading of the facts and circumstances of the case, this Court does not notice any inordinate delay with the filing of the application. The claim petition is also to be adjudicated like a suit. Therefore, cases which are posted for arguments and at that stage applications are made for reopening of the evidence cannot be equated to the present case on hand. Even Order XVIII Rule 3A CPC has been interpreted by the Division Bench to mean that an application can be

⁴ 1998 (2) ALD 241

filed and permission could be obtained later for examining the witnesses.

In addition, despite the plea raised by the revision petitioner that the first respondent/decreed holder will attempt to cover up the gaps in the evidence, nothing was pointed out. This Court notices that the first respondent has already been filed a counter in the claim petition. She has already filed a chief affidavit in the Court. Despite the question by the Court, the learned counsel is not able to point out which part of the evidence is attempted to be covered up by the proposed witness. Therefore, this Court is of the opinion that the apprehension raised by the learned counsel for the revision petitioner does not appear to be correct in the facts of the case. Even otherwise, if any attempt is made to cover up gaps or facts are deposed beyond the pleading/facts contrary to the counter are introduced etc., the law permits the counsel to object the same and the Court can also reject questions if they are irrelevant etc. In the absence of any clear evidence to show that the cause mentioned by the decreed holder for her non-appearance on 20.06.2013 is not correct and in view of the fact that immediately on the next day the evidence of the revision petitioner was recorded, this Court is of the opinion that an opportunity should be given to the first

respondent/ decree holder to introduce her evidence. Needless to say, if any attempt is made to cross the counter etc., or any attempt is made to cover up gaps, the learned counsel can raise all the relevant defences/objections before the lower Court. The Court can record and decide the objections and also proceed with the trial. Only on this ground, the trial could not be stayed.

Therefore, the Civil Revision Petition is dismissed. The impugned order dated 21.11.2013 is confirmed. The lower Court is directed to proceed with the examination of the witnesses on a priority, as the case is of the year 2014. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 17.12.2018

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