

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.7489 OF 2017

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the order dated 23.10.2017 passed on Memo (SR) No.26498 of 2017 in OS.No.406 of 2003 on the file of the Chief Judge, City Civil Court, Hyderabad, whereby the trial Court denied permission to cross examine D.Ws.2 and 4 by P.W.1 on the ground that D.Ws.2 and 4 are sailing defendants with the plaintiff.

As per the contention of the memo, D.Ws.2 and 4 are the sailing defendants with the plaintiff and they made certain allegations against the petitioner. The objection memo reads as under:

“It is humbly submitted that plaintiff herein filed the subject suit for partition and separate possession of his share in A and B schedule properties.

It is humbly submitted that defendants 2 & 4 herein virtually admitted the plaintiff's suit claim in respect of the A and B schedule properties. On the basis of the principle of non-traverse codified in Rules 3, 4 and 5 of Order VIII CPC and Section 58 Indian Evidence Act, 1872.

Therefore, the 2nd and 4th defendants are virtually disentitled to cross examine P.W.1. (Please refer **Karumanchi Subba Rao v. Yarlagadda Venkatappaiah¹**).”

Even according to the contentions raised in the memo, the defendants 2 and 4 virtually admitted the plaintiff's claim in respect of the A and B schedule properties. Therefore, the Court below was requested not to permit P.W.1 to cross examine

¹ AIR 1978 AP 193

defendants 2 and 4 by placing reliance on the judgment of this Court in **Karumanchi Subba Rao**¹.

The trial Court, upon hearing the arguments, passed the order on the memo following the law declared by this Court in **Karumanchi Subba Rao**¹. The order is now under challenge under Article 227 of the Constitution of India and the petitioners raised several contentions regarding passing of the orders on memo and while contending that the judgment in **Karumanchi Subba Rao**¹ has no application to the present facts of the case. But the Court below erroneously passed the order dated 23.10.2017 advertent to the pleadings of both the parties and prayed to set aside the same.

Sri V.N.Anagani, counsel for the petitioners, contended that no judicial order could be passed on memo and placed reliance on the judgments in **Syed Yousuf Ali v. Mohd. Yousuf and others**², **A.M.Siddique v. Smt. I.J.Saboor**³ and **Devireddy Mohan Rao v. Eluri Venkateswarlu**⁴ and also drawn attention of this Court to the judgment of this Court in **Karumanchi Subba Rao**¹ relied on by the trial Court.

None appeared for the respondents despite serving notice on the counsel in the trial Court, as directed by this Court, proof of service was filed.

In view of the specific contentions raised by the counsel for the petitioner that no judicial order can be passed based on memo, I would like to refer to the law laid down by this Court to decide the legality and propriety of the order under challenge.

² 2016(3) ALD 235

³ 2017(4) HLT 609

⁴ 2002(3) ALT 715

In fact, the memos are not contemplated either under the Code of Civil Procedure (CPC) or under the Civil Rules of Practice enabling the parties to file such memos necessitating the Courts to pass judicial order without affixing any Court fee on it as required on a petition. But filing of memo is only information to the Court about any subsequent incident. Basing on such memo, a judicial order cannot be passed in the absence of provision to file such memos either under CPC or Civil Rules of Practice.

Learned counsel for the petitioners relied upon the judgment of this Court in **Devireddy Mohan Rao**⁴ wherein this Court held that the practice of permitting the parties to file memos and then dispose of the suit either way is deprecated. This Court in **Syed Yousuf Ali**² expressed similar view while directing the Courts not to pass any judicial orders on memos. The same principle is reiterated in the earlier judgment in **A.M.Siddique**³. Therefore, in view of the law declared by this Court in all the three judgments, passing a judicial order on a memo is impermissible on this ground alone the order under challenge is liable to be set aside.

The basis for passing a judicial order is the principle laid down in **Karumanchi Subba Rao**¹. According to the principle laid down in the above case, Section 137 of the Indian Evidence Act confers right to cross examine the witness only when he has an interest adverse to the one who is proposed to be cross-examined. The very purpose of the cross-examination is to test the veracity of the testimony of the witness. Therefore, wherein a suit by the partner against the other partners for declaration

that the debt due by the plaintiff to the defendants was partially discharged, the defendants specifically admit in their written statement that the accounts were properly maintained by the plaintiff and request the Court to decree the suit as prayed for the defendants cannot be said to have an interest adverse to that of the plaintiff and therefore, they cannot be permitted to cross examine the plaintiff because they have no statutory right to do so.

But in the present facts of the case the defendants 2 and 4 in the written statement before the trial Court specifically denied the nature of B schedule property as claimed by the plaintiff in the said suit while contending that A schedule property is a joint property. Thus, defendants 2 and 4 specifically denied the nature of B schedule property and they are entitled to cross examine the witness. However, the Court below did not advert to the pleadings and more particularly with regard to the nature of A and B schedule properties and entitlement of claim of any right. Therefore, the order passed by the Court below is liable to be set aside on two grounds i.e. (1) no judicial order can be passed on a memo; and (2) the trial Court did not advert to the pleadings in the written statement filed by defendants 2 and 4 with regard to A and B schedule properties and therefore, the impugned order is hereby set aside.

In the result, the Civil Revision Petition is allowed setting aside the order dated 23.10.2017 passed on Memo SR.No.26498 of 2017 in O.S.No.406 of 2003 on the file of the Chief Judge, City Civil Court, Hyderabad. There shall be no order as to

costs. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

23rd January 2018
RRB

