

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP Nos.1583 and 1584 of 2021

COMMON ORDER:

1. Civil Revision Petition No.1583 of 2021 is directed against the order dated 01.10.2021 in IA No.422 of 2021 in OS No.1172 of 2017 on the file of the learned VIII Additional District Judge, Ranga Reddy District at L.B. Nagar.
2. IA No.422 of 2021 is filed under Order-XVIII, Rule-16 CPC seeking permission to examine the witnesses, Smt. Krishna Kumari and Smt. K. Ramadevi on behalf of the petitioner/plaintiff dispensing with the other procedure under Order-XVIII CPC.
3. Whereas, CRP No.1584 of 2021 is filed against the order dated 01.10.2021 in IA No.435 of 2021 in OS No.1172 of 2017 filed under Order-XXVI, Rule-1 read with Section 151 CPC seeking appointment of Advocate Commissioner to record the evidence of Smt. Krishna Kumari and Smt. K. Ramadevi and the cross-examination at their respective residences.
4. The Court below through the common order dated 01.10.2021 dismissed both the applications with an observation that the suit is posted for settlement of issues since the year 2018 and due to pandemic the case has been adjourned from time to time. Now, in view of the present situation the Courts are gradually started functioning normally in a full-fledged manner, the case may be taken

up in a regular course as expeditiously as possible, as the issues have to be settled in the case by the next date of hearing and thereafter, the petitioner is at liberty to proceed with the trial as early as possible. Accordingly, with the said observation, both the applications were dismissed.

5. The original suit No.1172 of 2017 is filed for declaration of title, partition, delivery of possession and for mesne profits. As stated above, written statement was filed by the defendants and the suit was posted for framing of issues, but due to covid-19 pandemic, these matters were not listed in the regular course. Consequently, there was delay. The petitioner/plaintiff has filed these applications in IA Nos.422 and 435 of 2021 for examination of witnesses, Smt. Krishna Kumari and K. Ramadevi under Order-XVIII, Rule-16 CPC and for recording their cross-examination through Advocate Commissioner.

6. Order-XVIII, Rule-16 CPC deals with power of the Court to examine witnesses immediately. Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately, on such request the Court may at any time after institution of the suit, take the evidence of such witnesses as provided under Order-XVIII CPC.

7. The case of the plaintiff, as it could be seen from the averments in the affidavit filed in support of the application in IA No.422 of

2021, is that he intends to examine his paternal aunt-Smt. Krishna Kumari, who is aged 85 years and one Smt. K. Ramadevi, who is aged 74 years. Smt. Krishna Kumari is suffering from some ailments and her bones becoming brittle. She is not keeping good health for the past few months and she is completely bed-ridden. Whereas, Smt. Ramadevi had treatment for her heart valves and she has been advised by the Doctors that no further treatment can be done to the valves of her heart and she is in a fragile condition. If these witnesses are examined before the settlement of issues, no prejudice would cause to the respondents/defendants. But, the Court below after hearing both parties, dismissed the applications with an observation that due to covid-19 pandemic, this matter could not be listed in the regular course and once things become normal, this matter will be listed in regular course and after settlement of issues, the evidence may be recorded. But, the age of witnesses is shown as 85 and 74 years, their health condition is also shown and one of the witnesses is likely to leave the jurisdiction of the Court. Accordingly, under such circumstances, these applications were filed.

8. The Hon'ble Supreme Court in *Laxmibai (dead), through LRs and another v. Bhagwantbuva (dead), through LRs and others*¹ while dealing with the similar situations held that where a witness is about to leave the jurisdiction of the Court, it may upon the application of the party or witnesses, take the evidence of such witnesses

¹ AIR 2013 SC 1204

immediately. Thus, under exceptional or extraordinary circumstances, at the request of the parties, the Court may record their evidence by invoking the provisions of Order-XVIII, Rule-16 of CPC. In the present case, considering the age and health condition of the witnesses and as one of the witnesses is likely to leave the jurisdiction of the Court, I am of the considered view that it is a fit case to exercise the discretion conferred under Order-XVIII, Rule-16 CPC. Therefore, I find justification in the request of the petitioner/plaintiff to examine the witnesses named in the application before settlement of the issues immediately before the parties/plaintiff is examined as a witness and also to record their evidence in cross-examination through the Advocate Commissioner. Considering the huge pendency of cases on the file of District Court at Ranga Reddy, it may not be possible to record the evidence of parties in a civil suit pertaining to the year 2017 immediately in normal course and it may take lot of time. In that view of the matter, I find that the Court below has failed to exercise its discretion under Order-XVIII, Rule-16 CPC.

9. In the result, both the Civil Revision Petitions are allowed and the impugned common order dated 01.10.2021 in IA Nos.422 and 435 of 2021 in OS No.1172 of 2017 on the file of learned VIII Additional District Judge, Ranga Reddy District at L.B. Nagar, is set aside. The Court below is directed to receive the evidence affidavit of Smt. Krishna Kumari and Smt. K. Ramadevi, in lieu of their chief examination and appoint an Advocate Commissioner to record their

cross-examination by fixing fee to be payable by the petitioner. The entire exercise shall be completed within three months from the date of receipt of a copy of this order. In the circumstances of both the cases, there shall be no order as to costs. Miscellaneous applications, if any pending in these revision petitions shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 21.12.2021

Note: Issue CC by tomorrow.
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