

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

Civil Revision Petition No. 6920 of 2017

Between:

Bathini Gangaram Goud, S/o B. Chinnaiah, Age:63 years, Occ: Retired Employee, R/o Flat No. 105, Gokul Kunj Apartments, St.No. 5, Himayathnagar, Hyderabad

...Petitioner/Respondent/Defendant No.9.

AND

1. Md. Taher, S/o Late Md. Anwar, Age 30 years, Occ: Household, Rep. By his mother/Natural Guardian, Saleemunnissa Begum, w/o Late Mohd. Anwar, age 62 years, Occ: Business, R/o H.No. 6-3-1242/50, Opp. Raj Bhavan Madhar Sahab Maqtha, Somajiguda Hyderabad.
...Respondent/Petitioner/Plaintiff.

2. Aziz Begum died as per L. R's (respondents 3 to 9).
3. Abdul Rahim, s/o Late Abdul Hameed, Age 35 years, Occ: Employee.
4. Abdul Jahanger, s/o Late Abdul Hameed, Age 23 years, Occ: Business.
5. Karimunnissa Begum, w/o Md. Anwar, Age 43 years, Occ: Housewife.
6. Afser Begum @ Afserunnissa, w/o Sheik Mahboob, Age 30 years, Occ: Housewife.
7. Parveen Begum, w/o Syed Suitha, Age 30 years, Occ: Housewife.
8. Nafees Begum, w/o Syed Khaja Pasha, Age 25 years, Occ: Housewife.
9. Maharunnissa Begum @ Meher, w/o Syed Khaja Pasha, Age 24, Occ: housewife.

(Respondents 2 to 9 are R/o Athvelly Village, Medchal Mandal And District)
(Respondents 3 to 9 are not necessary parties)

...Respondents/Respondents/Defendants.

Revision filed under Article 227 of the Constitution of India, aggrieved by Order dated 09.08.2017 in I.A.No.50 of 2017 in O.S.No.2081 of 2006 on the file of the Court of the Senior Civil Judge (FAC) VI Addl. Senior Civil Judge (FTC) Medchal, Ranga Reddy District.

I.A. NO: 1 OF 2017(CRPMP. NO: 8895 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No.2081 of 2006, on the file of in the court of the Senior Civil Judge (FAC) VI Addl. Senior Civil Judge (FTC) Medchal, Ranga Reddy District, pending disposal of the above C.R.P., in the interest of justice.

Counsel for the Petitioner: Sri B.Sudhakar Reddy And Neeraja Reddy, Advocate.

Counsel for the Respondent No.1 :Sri Gaddam Srinivas, Advocate.

Counsel for the Respondent Nos.2 to 9: Not necessary parties.

The Court made the following: **ORDER**

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA**CIVIL REVISION PETITION No.6920 of 2017****ORDER:**

1. Questioning the validity and the legality of the order that is rendered by the Court of VI Additional Senior Civil Judge, Medchal, Ranga Reddy District in I.A.No.50 of 2017 in O.S.No.2081 of 2006, dated 09.08.2017, the revision petitioner, who is arrayed as respondent No.9 in the said Interlocutory application, is before this Court.
2. Heard the submission of the learned counsel for the parties, i.e., the learned counsel for the revision petitioner and the learned counsel for respondent No.1. Also, gave anxious consideration to their submission including the applicability of the decision of this Court in the case between *M.Venkataratnam Reddy Vs. P.L.Manogaran and Others*¹.
3. By the submission of both the learned counsel what could be culminated is that a suit for declaration of title and for recovery of possession of the suit schedule property is filed by respondent No.1 herein against the revision petitioner, who is shown as defendant No.9, and others.
4. Defendant No.2 and defendant No.9 i.e., revision petitioner filed a common written statement in the suit. The trial Court after framing of issues commenced trial. Defendant No.2 got examined himself as D.W-1 and defendant No.9 i.e., the revision petitioner filed his affidavit in lieu of his chief-examination as D.W-2 and when the

matter was posted for his cross-examination, respondent No.1/plaintiff moved an interlocutory application vide 1.A.No.50 of 2017 seeking the Court to eschew the evidence of D.W-2 i.e., the revision petitioner. The said application was allowed through the impugned order. Aggrieved by the same, the revision petitioner is before this Court.

5. The main ground urged while seeking to eschew the evidence of D.W-2 is that he was present in the open Court while D.W-1 was cross-examined and therefore, he should be precluded from giving evidence. Thus, in the light of the said plea taken, the point that arises for consideration is:

Whether the presence of a party to the suit during the course of cross-examination of a witness precludes him from giving evidence before the Court of law.

6. Justifying the plea taken through this Revision Petition, the learned counsel for the revision petitioner contended that no objection was taken by the learned counsel for respondent No.1-plaintiff regarding the presence of the revision petitioner while D.W-1 was cross-examined and the revision petitioner is not being examined as a witness of defendant No.2, but he is one of the parties to the suit and that, each party to the suit has got right to participate in the proceedings and adduce evidence and the same was done by the revision petitioner and therefore, the order of the trial Court is unjustifiable.

7. Vehemently opposing the said submission, the learned counsel for respondent No.1-plaintiff submitted that if the revision petitioner/defendant No.9 had got an intention to testify before the

Court, he ought not to have appeared and present in the Court hall while D.W-1 was being cross-examined, and having heard what was asked and what was stated by D.W-1 during the course of his cross-examination, now he cannot project himself before the Court as a witness. The learned counsel further contended that only to fill up the lacunae and to cover the laches, the evidence of the revision petitioner/defendant No.9 is pressed into service and therefore, the trial Court rightly eschewed his evidence.

8. The learned counsel for respondent No.1/plaintiff, submitting that when one of the witnesses is being examined, others who are proposed to be examined as witnesses should not be present in the Court hall and that is the dictum of law, relied upon the decision of this Court in the case between *M.Venkataratnam Reddy* (supra). The factual matrix of the said case is as follows:-

"In a suit for perpetual injunction, when D.W-2 was being cross-examined, a person who was sought to be examined as D.W-3 and filed affidavit in lieu of his chief-examination, remained in the Court. Recording his presence, the trial Court held that the said witness is not entitled to depose as a witness and thereby, eschewed his evidence."

In the aforesaid factual circumstances, this Court at para 5 of the order held as follows:

"If a party to a suit intends to examine more witnesses than one, the basic requirement is that when one of the witnesses is being examined, others who are proposed to be examined as witnesses are not present in the Court. If they are present, they would naturally become alert and fill the lacunae, that may be left in the evidence of the person, who

is already examined as a witness. The Law does not permit this. However, exactly the same thing has happened in the instant case. When the cross-examination of D.W. 2 was in progress, a person who is proposed to be examined as D.W-3, was present in the Court throughout. The trial Court has taken correct view of the matter, when it held that the evidence of D.W-3 cannot be recorded at all and that the affidavit filed by him in lieu of chief-examination is liable to be eschewed from consideration. If at all anything, the trial Court has only enforced a fundamental principle and basic tenet of law of evidence. The petitioner has to blame himself for not ensuring that a witness, who is proposed to be examined by him, is not in the Court, when the other witness is being cross-examined."

9. However, in the case on hand, the revision petitioner is a party to the suit. He is not a witness of defendant No.2. Furthermore, the normal course that is being followed by the Courts of law in such cases should also be borne in mind. Though the Code of Civil Procedure requires the list of witnesses to be filed and the evidence of the witnesses to be recorded on day-to-day basis, the counsels for the parties, i.e., for the plaintiff as well as the defendant, are filing the affidavits of the parties in lieu of their chief-examination one by one and after completion of evidence of one witness i.e., after filing of the chief-affidavit and after the said witness is cross-examined, thereafter, the chief-affidavit of the other witness is filed and the said witness is subjected to cross-examination. Such being the way of proceeding with in the trial Courts due to pressure of work and for the purpose of accommodating the counsels, even if it is taken into consideration that the revision petitioner-D.W-2 was not present in the Court hall when

D.W-1 was cross-examined, it cannot be ruled out that the certified copy of deposition of the said witness would have been taken and thereafter, the chief-affidavit of D.W-2 might have been filed and then the cross-examination would have been conducted. If such course was followed, naturally respondent No.1/plaintiff might not have taken any objection. It is not the version of respondent No.1-plaintiff that he had produced all the chief-affidavits of his witnesses and subjected all of them to cross-examination at a time. It is not being done in most of the Courts of law. Therefore, this Court is of the view that a party to the suit cannot be denied his legitimate right of putting forth his evidence before the Court of law. Therefore, this Court holds that the order under challenge is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed. The order of the Court of VI Additional Senior Civil Judge, Medchal, Ranga Reddy District in I.A.No.50 of 2017 in O.S.No.2081 of 2006, dated 09.08.2017, is set aside. There shall be no order as to costs.

11. Pending Miscellaneous Petitions, if any, shall stand closed.

Sd/-T.KRISHNA KUMAR
ASSISTANT REGISTRAR
Go
SECTION OFFICER

//TRUE COPY//

To,

One Fair Copy to the Hon'ble Dr. Justice Chillakur Sumalatha
(For Her Lordships Kind Perusal)

To,

- 1 The Senior Civil Judge (FAC) VI Addl. Senior Civil Judge (FTC) Medchal, Ranga Reddy District.
- 2 11 L.R. Copies
- 3 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
- 4 The Secretary, Advocates Association (TG) Library, High Court Buildings Hyderabad.
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- 6 One CC to Sri B. Sudhakar Reddy And Neeraja Reddy, Advocate [OPUC]
- 7 One CC to Sri Caddam Srinivas, Advocate [OPUC]
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JCK
H

HIGH COURT

DATED:31/12/2021

ORDER

CRP.No.6920 of 2017



Allowing the CRR without Costs.

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24/1/22
J/V4