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APHC010626942016

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3606]**
(Special Original Jurisdiction)

MONDAY, THE 26th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

CIVIL REVISION PETITION NO: 2734/2016

Between:

1. BADA NARAYANA REDDY & 5 OTHERS, S/O. BADA PAKIR REDDY, AGED ABOUT 66 YEARS, HINDU, CULTIVATION, R/O. CHANDRAYUNIPALLI VILLAGE, H/O. REDDIPALLI, NALLAMADA MANDAL, ANANTAPUR DISTRICT DIED BY LRS., PETITIONERS/RESPONDENTS 2 TO 6.

2. BADA PARVATHAMMA,, W/O. LATE. B. NARAYANA REDDY, AGED ABOUT 61 YEARS, R/O. CHANDRAYUNIPALLI VILLAGE, H/O. REDDIPALLI, NALLAMADA MANDAL, ANANTAPUR DISTRICT.

3. B. RAMANA REDDY,, S/O. LATE. B. NARAYANA REDDY, AGED ABOUT 40 YEARS R/O. CHANDRAYUNIPALLI VILLAGE, H/O. REDDIPALLI, NALLAMADA MANDAL, ANANTAPUR DISTRICT.

4. B. CHANDRA MOHAN REDDY,, S/O. LATE. B. NARAYANA REDDY, AGED ABOUT 37 YEARS, R/ O. CHANDRAYUNIPALLI VILLAGE, H/O. REDDIPALLI, NALLAMADA MANDAL, ANANTAPUR DISTRICT.

5. S. SUGUNAMMA,, W/O. RAMACHANDRA REDDY, AGED ABOUT 46 YEARS, R/O. SANEVARIPALLI VILLAGE, H/O. VANKARAKUNTA, NALLAMADA MANDAL, ANANTAPUR DISTRICT.

6. MEKA PADMAVATHAMMA,, W/O. MADHAVA REDDY, AGED ABOUT 42 YEARS, R/O. BADAVANDLAPALLI VILLAGE, NALLAMADA

MANDAL, ANANTAPUR DISTRICT.

...PETITIONER(S)

AND

1. THOLETI RAJASEKHAR REDDY, S/O. THOLETI NARASIMHA REDDY, AGED 53 YEARS, HINDU, OCC: CULTIVATION, R/O. CHANDRAYUNIPALLI VILLAGE, H/O REDDIPALLI, NALLAMADA MANDAL, ANANTAPUR DISTRICT.

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to against the Order dated 18-03-2016 in I.A. No. 753/2015 in O.S. No. 508/2005 on the file of the Court of the Principal Junior Civil Judge, Kadiri, Anantapur District

IA NO: 1 OF 2016(CRPMP 3468 OF 2016

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 OS No. 508/2005 on the file of the Court of the Principal Junior Civil Judge, Kadiri, Anantapur District and pass

Counsel for the Petitioner(S):

1. MANJUNATH ALLUR

Counsel for the Respondent:

1. O MANOHER REDDY

The Court made the following:

THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

CIVIL REVISION PETITION NO.2734 OF 2016

ORDER:

This revision petition is directed against the order dated 18.03.2016 passed by the learned Principal Civil Judge (Junior Division), Kadiri, in I.A.No.753 of 2015 in O.S.No.508 of 2005, allowing the application to receive documents.

2. The revision petitioners are the respondents in I.A.No.753 of 2015 and plaintiffs in O.S.No.508 of 2005. The respondent herein is the petitioner in the interlocutory application and defendant in the suit. For convenience, the parties are referred to as they are arrayed in the suit, namely, the petitioners as plaintiffs and the respondent as defendant.

Brief facts of the case:

3. The suit was filed seeking the relief of declaration and permanent injunction. The first plaintiff, Sri Bada Narayana Reddy, died, and plaintiff Nos.2 to 6 were brought on record as his legal representatives. The plaintiffs examined Sri B. Ramana Reddy, the third plaintiff, as P.W.1. His examination-in-chief was partly recorded, and the matter was posted for his further examination. At that stage, the defendant filed I.A.No.753 of 2015 under Order VIII Rule 3(1) of the Code of Civil Procedure, 1908 (hereinafter, “the CPC”), seeking permission to produce certified copies of the depositions of Sri B. Ramana Reddy, Sri T. Narayana Reddy, Sri K. Kristappa and Sri J. Sankar Rao. The defendant stated that, during the lifetime of Sri Bada Narayana Reddy, he had lodged a criminal complaint against the defendant herein and others, involving alleged offences punishable under Sections 468, 420 and 419 read with Section 149 of the Indian Penal Code, 1860 (hereinafter, “the IPC”). The case was registered as C.C.No.336 of 2015 upon transfer from

original Court. The criminal case was at the stage of arguments. In that case, the third plaintiff was examined as P.W.1, while Sri T. Narayana Reddy, Sri K. Kristappa and Sri J. Sankar Rao were examined as P.Ws. 2 to 4 on behalf of the prosecution. The defendant sought to produce their depositions for use in the present suit, in which Sri B. Ramana Reddy, the third plaintiff, was being examined as P.W.1. Accordingly, the sole defendant filed the application to receive the certified copies of the depositions of the four witnesses.

4. The plaintiffs opposed it contending that the depositions recorded in the criminal case appeared to have been sought to be used under Section 33 of the Indian Evidence Act, 1872, but were not relevant to the civil suit. They further contended that criminal and civil proceedings follow different procedures and that findings in the criminal case would not bind the civil Court. On these grounds, they sought dismissal of the application.

5. After hearing both sides, the learned Judge allowed the application, observing in paragraph 8 as follows:

> "8. … On considering the contentions of both sides, this Court feels that merely receiving the documents would not vitiate the case of the respondents/plaintiffs. The petitioner/defendant has to prove the admissibility and relevance of the documents before they are marked. Moreover, there are no tenable objections in the counter. Accordingly, the petition is allowed.
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> 9. In the result, the petition is allowed."

6. Aggrieved by the order permitting the defendant to produce the depositions of the third plaintiff and three other witnesses recorded in the criminal proceedings, the plaintiffs have filed this revision petition.

7. Heard Sri G. Mahesh, learned counsel representing Sri Manjunath Allur, learned counsel for the plaintiffs, and Sri K. Devi Prasanna Kumar, learned counsel representing Sri O. Manohar Reddy, learned Counsel for the defendant.

Arguments:

8. Sri G. Mahesh, learned counsel appearing for the plaintiffs contended that the trial Court ought not to have allowed the application to receive certified copies of depositions recorded in a criminal trial. Such depositions do not, by themselves, constitute substantive evidence in the civil suit. Referring to Order VIII Rule 3(1) CPC, counsel submitted that the defendant was required to explain why the documents had not been filed at the appropriate stage along with the written statement. No sufficient reason had been stated in the affidavit for seeking permission to produce them at a later stage. Counsel further submitted that the certified copies amounted to secondary evidence and that the defendant had not filed an appropriate application under the relevant provisions of law. Therefore, the interlocutory application ought to have been dismissed.

9. In reply, learned counsel for the defendant submitted that the application was confined to receiving the documents on record and did not seek to treat them as conclusive evidence. The parties would have an opportunity to address their admissibility and evidentiary value. Counsel further contended that Section 33 of the Indian Evidence Act, 1872, did not apply to the present case.

Discussion:

10. The principal issue in this revision is whether depositions recorded in the criminal proceedings can be received in the present civil suit. The record shows that, during the pendency of the suit, the first plaintiff, Sri Bada Narayana Reddy, lodged a criminal complaint against the defendant. In that criminal case, the third plaintiff was examined as P.W.1, and three other witnesses were also examined.

11. The defendant, who is an accused in C.C.No.336 of 2015, sought to produce the certified copies of the depositions of B. Ramana Reddy, the third

plaintiff, and the other three witnesses, deposition to place before P.W.1 i.e. Sri B. Ramana Reddy in the civil suit.

12. By the time the application was filed, the first plaintiff had died. The parties disputed whether the depositions recorded in the criminal proceedings could be used in the civil suit. Although the parties raised these issues before the trial Court, the impugned order does not discuss them.

13. Section 33 of the Indian Evidence Act, 1872, reads as follows:

> "**33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated:** Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :
>
> Provided that:
>
> (i) the proceeding was between the same parties or their representatives in interest;
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> (ii) the adverse party in the first proceeding had the right and opportunity to cross-examine; and
>
> (iii) the questions in issue were substantially the same in the first proceeding and the subsequent proceeding.
>
> **Explanation**: A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

14. Section 33 falls under Chapter II of the Indian Evidence Act, 1872, which deals with the relevancy of facts. Section 3 defines "evidence" to include oral evidence and documentary evidence.

(1) All statements that the Court permits or requires witnesses to make before it in relation to matters of fact under inquiry are called oral evidence.

(2) All documents, including electronic records, produced for the inspection of the Court are called documentary evidence.

15. Sec.3 also defines “fact”-to include anything, any state of things or any relation of things capable of being perceived by the senses, as well as any mental condition of which a person is conscious.

16. The illustrations to Section 3 i.e. Sec. 3 illustrations (c) - relevant here say -“That a man said certain words, is a fact”. This means, fact includes that a person said certain words. Though he may not be a complainant, but he is a party witness to the prosecution making a statement for prosecution. That statement in criminal proceedings is now raised as a relevant fact (Sec. 3 illustration c). Where a party seeks to rely on a statement made in an earlier judicial proceeding, the Court has to consider the purpose for which the statement is relied upon and on the applicable rules of relevancy and admissibility.

17. Section 33 permits evidence given in an earlier judicial proceeding to be used in a subsequent proceeding to prove the truth of the facts stated therein only when the conditions prescribed by that section are satisfied. Those conditions include that the proceedings were between the same parties or their representatives in interest, that the adverse party had the right and opportunity to cross-examine the witness, and that the questions in issue were substantially the same. The Explanation treats a criminal trial or inquiry as a proceeding between the prosecutor and the accused.

18. The illustrations, ‘fact’ (Sec.3-(c)) means and includes a man had said certain words. This fact has to be placed for evidence. If the averments are that, a man has said certain words or statements, it is to be examined to cull out the truth as to his statements, evidenced by oral or documentary evidence.

Chapter II deals with the relevancy of facts. To this case, relevancy of fact is the fact that a man has given a statement or said some words in judicial proceeding or before any person authorised by law, becomes a fact that, is so relevant to prove that statement.

19. The statement of such a person, if want to be brought as relevant, the issue to be considered is, the person who made that statement is alive or not. Then comes, in which judicial proceedings the statement was made, either civil or criminal. If it is criminal proceedings, the relevancy would come upon the conditions laid under Sec. 33 of Indian Evidence Act, 1872 (herein after referred as 'Evidence Act'.

20. The conditions required for consideration under Sec.33 of Indian Evidence Act, 1872 are that, the proceedings shall be between the same parties. Adverse party had an opportunity to cross-examine the said party i.e.the party who gave statements in criminal proceedings, had been cross examined. The questions in issue have to be substantially the same in first and subsequent proceedings.

21. The learned counsel for the plaintiffs relied on the distinction between the parties to a criminal proceeding and those to a civil suit. In a criminal proceeding, the parties are the prosecution and the accused; in a civil suit, they are the plaintiff and the defendant. The applicability of Section 33 must, however, be assessed by applying the statutory conditions to the facts of the particular case.

22. In the case on hand, the prosecution was not a party to the criminal proceeding, and the defendant was an accused. The third plaintiff was examined as a prosecution witness. But he a party to that proceeding, as to the relevant facts of statement in the criminal proceeding. If he is a party as to the fact of statement in that case, that statements of him as to the said facts, becomes relevancy to the civil suit. This requires for consideration. The third plaintiff, who stated in the criminal proceedings, is alive. It do not satisfy the

conditions under Section 33 of the Evidence Act, as he is alive. But statements previously made by the party before authority can be confronted under Section 145 of the Evidence Act.

23. The documents sought to be received comprise the deposition of the third plaintiff and the depositions of three other persons. The third plaintiff is a party to the present suit and is available for examination. His deposition in the criminal proceedings as can discussed above may be considered as a previous statement. If the statement is relied upon to contradict him, the procedure prescribed by Section 145 of the Evidence Act, for cross-examination as to previous statements in writing would follow. Mere receipt of the deposition does not, by itself, prove the truth of its contents. It can be tested in examination.

24. Thus, by provision of Section 145 read with Section 33 of the Evidence Act, to prove the relevant fact of statements can be applied from the statements made before the criminal Court. The witness in criminal case is 3rd plaintiff is the party on behalf of deceased first plaintiff, and in civil case, he is a party as LR of deceased first plaintiff. Thus, the 3rd plaintiff is *per se* not original complainant or a party to the criminal proceedings but becomes a party as a witness for the original complainant i.e. 1st plaintiff (died) likewise in the present suit, he is not the original plaintiff but on behalf of original deceased 1st plaintiff, he came on record as a party being the LR of deceased 1st plaintiff. Thus, in both the cases, he becomes the party of the proceedings.

25. The depositions of T. Narayana Reddy, K. Kristappa and J. Sankar Rao stand on a different stage. They are not parties to the present suit, and the record does not show that they are to be examined as witnesses in it. Their depositions cannot be treated as previous statements made by the third plaintiff, on the premise that all four witnesses were examined in the same criminal proceedings. For the above three persons, the issue arise, Section 33 of the Evidence Act, 1872, that they were have to be parties in the criminal

and civil proceedings. They are not parties in civil proceedings. Therefore, they do not fall under Section 33 read with Section 145 of the Evidence Act, 1872.

26. The defendant relied on **Jerrypothu Shamu John Babu v. Peddipoga Anandarao and another**[1]. In that case, the plaintiff had filed a suit for recovery of money on a promissory note and sought to recall P.W.1 under Order XVIII Rule 17 CPC to receive the deposition of the second defendant recorded in an earlier suit, O.S.No.111 of 1988, instituted by the defendants. The objection was that the deposition could not be received in view of Section 33 of the Indian Evidence Act, 1872. The trial Court rejected the application, and the matter was carried in revision. This Court held, relying on the decision of the Supreme Court in **Union of India v. Moksh Builders and Financiers**[2], that an admission made by the opposite party in an earlier proceeding may be relevant even where Section 33 does not apply. The Court also noted that the earlier evidence had been recorded in a suit between the same parties. The relevant passage reads as follows:

> "8. After hearing both the learned Counsel for the parties and considering the material on record, I find merit in the contention of the learned Counsel for the petitioner, especially in the light of the decision of the Supreme Court in the case of Union of India v. Moksh Builders and Financiers (supra), that the petition is liable to be allowed. As per the said decision of the Apex Court even though the situation is not covered by Section 33 of the Evidence Act, still the party is entitled for admission of such evidence where the other side has made admissions. Further, it is also a fact that the evidence was recorded in the suit instituted between the same parties. Therefore, it is appropriate that the admissions made in an earlier suit should be received as evidence and the same should be marked as an exhibit on behalf of the present plaintiff. The decisions of the Calcutta High Court relied upon by the learned Counsel also support his contention."

[1] 2002 (3) ALT 510
[2] (1977) 1 SCC 60

27. The High Court set aside the order rejecting the application and permitted the earlier deposition to be received, having regard to the admissions relied upon and the fact that the evidence had been recorded in a suit between the same parties.

28. The facts of the present case are distinguishable. First, the deposition sought to be produced in this case was in criminal proceedings. Secondly, Sri T. Narayana Reddy, Sri K. Kristappa and Sri J. Sankar Rao are not parties to the present suit. They were examined as witnesses in the criminal case. Sri B. Ramana Reddy, on the other hand, is a party to the present suit and was examined as a prosecution witness in the criminal proceedings.

29. The earlier proceeding was a criminal case, whereas the present proceeding is a civil suit. The nature of the proceedings and the purpose for which the depositions are sought to be used are therefore to be considered.

30. The three other witnesses are not parties to the present suit. Their depositions cannot be treated as the previous statements of Sri B. Ramana Reddy on behalf of deceased 1st plaintiff. The admissibility and evidentiary use of those depositions has to be assessed independently. For these reasons, the above ruling is distinguishable.

31. The learned trial Judge allowed the application in respect of all four depositions without separately considering their nature and the purpose for which each was sought to be used. The deposition of Sri B. Ramana Reddy can be considered as his previous statement. The other three depositions cannot be treated as statements of Sri B. Ramana Reddy and must be dealt with in accordance with law.

31. In view of the foregoing discussion, I am of the view that, allowing the application in respect of all four depositions without distinguishing between them, is not proper. The certified copy of the deposition of B. Ramana Reddy,

examined as P.W.1 in C.C.No.336 of 2015, can be received on record, subject to objections as to its admissibility, relevance and permissible use.

32. As to the objection of certified copy of the document concerned, it is the deposition of the party relevant to confront. Thus, *per se*, certified copy, in the circumstances, cannot be said secondary evidence. It is production of a previous statement to the witness. It is not an entire document that sought to be produced. The relevant statements in the depositions are required to prove the fact/relevant fact of a statement of a person. The document of deposition is the statement recorded by the concerned authority that may not be equated with the entire document. Hence the stand that, certified copy of the deposition becomes secondary evidence in the present circumstances of the case is not tenable. The certified copies of the depositions of Sri T. Narayana Reddy, Sri K. Kristappa and Sri J. Sankar Rao cannot be received under the same reasoning or treated as previous statements of Sri B. Ramana Reddy. The revision petition therefore deserves to be allowed in part.

Result:

33. In the result, the revision petition is allowed in part, with the following directions:

i. The order dated 18.03.2016 passed in I.A.No.753 of 2015 in O.S.No.508 of 2005 on the file of the Principal Civil Judge (Junior Division), Kadiri, is hereby set aside.

ii. The certified copy of the deposition of B. Ramana Reddy, examined as P.W.1 in C.C.No.336 of 2015, is hereby received, subject to proof, and relevancy. Both parties are at liberty to raise their objections at the appropriate stage, including when the document is tendered for marking.

iii. The application to receive the depositions of Sri T. Narayana Reddy, Sri K. Kristappa and Sri J. Sankar Rao, is hereby rejected.

There shall be no order as to costs.

Pending interlocutory applications, if any, shall stand closed.

Interim order granted earlier is hereby vacated.

PURUSHOTTAM KUMAR CHINTALAPUDI, J

Dt: 26.10.2026
DSV