



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE G. SHYAM PRASAD
CIVIL REVISION PETITION NO: 41 OF 2019

Between:

1. Smt. BANDI SUBBAMMA W/o. late Subbarayudu, aged 65 years, Hindu, House wife, R/o.D.No. 19-40, Gudipatigadda, Nandyal, KURNOOL DISTRICT.

...PETITIONER(S)

AND:

1. P MAHESWARAIAH S/o. Veerabhadru, R/o.D.No. 1-139G, Nasamvari Street, Nandyal, KURNOOL DISTRICT.
2. BANDI LOKNATHAM S/o. late Subbarayudu, business, R/o.D.No. 19-40, Gudipatigadda, Nandyal, Kurnool District.

...RESPONDENTS

Counsel for the Petitioner(s): V DYUMANI

Counsel for the Respondents: G SRAVAN KUMAR

The Court made the following: ORDER



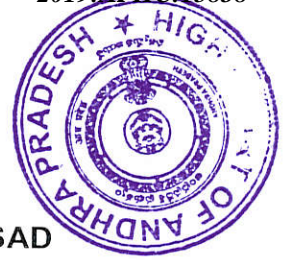
IN THE HIGH COURT OF ANDHRA PRADESH

2019:APHC:15838

FRIDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CIVIL REVISION PETITION NO: 41 OF 2019

(Petition under Article 227 of Constitution of India aggrieved by the Docket Orders dated 03-01-2019 passed in CFR No.8169 of 2018 in OS No.23 of 2013, on the file of the court of the III Additional District Judge, Kurnool at Nandyal.)

Between:

Smt. Bandi Subbamma, W/o. late Subbarayudu

...Petitioner/Petitioner/Defendant No.2

AND

1. Palle Maheswaraiyah, S/o. Veerabhadrudu ...Respondent/Respondent/Plaintiff
2. Bandi Loknatham, S/o. late Subbarayudu

...Respondent/Respondent/Defendant No.1

(Respondent No.2 is not a necessary party to the present Petition)

IA NO: 1 OF 2019

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 grant stay of all further proceedings in O.S.No.23 of 2013 on the file of III Additional District Judge, Kurnool at Nandyal, pending disposal of the above revision.

For the Petitioner: Smt. V.DYUMANI, Advocate

For the Respondents: SRI G.SRAVAN KUMAR, Advocate

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.41 OF 2019

ORDER:-

This Civil Revision Petition is directed against the order passed by the learned III Additional District Judge, Kurnool at Nandyal *vide* docket order, dated 03.01.2019, passed in C.F.R.No.8169 of 2018 in O.S.No.23 of 2013.

2. The grievance of the petitioner is that her objection for marking the documents Exs.A-6 and A-9 was not considered in O.S.No.23 of 2013 on the file of the III Additional District Judge, Kurnool at Nandyal. The petitioner thereafter filed a petition under Order XIII Rule 3 C.P.C. to reject those documents as they are irrelevant and inadmissible in evidence. The said petition was rejected by the trial Court. Aggrieved by the impugned rejection by way of the docket order referred above, the present Civil Revision Petition is filed.

3. The argument of the learned counsel for the petitioner is that Order XIII Rule 3 C.P.C. enables the Court to reject the documents at any stage of the suit if it considers those documents as irrelevant or otherwise inadmissible. The petitioner's contention is that her petition was rejected at the threshold without enquiry.

4. At this juncture, it is appropriate to refer to the findings of the trial Court while rejecting the said application. The trial Court came to the conclusion that the documents - Exs.A-6 and A-9 were not objected when filed along with the evidence affidavit of the plaintiff and once a document is admitted and marked, it cannot be demarked and rejected by the trial Court.



5. It is to be seen whether the grounds on which the trial Court has rejected the petition filed under Order XIII Rule 3 C.P.C. is justifiable or not.

6. It is appropriate to refer to the provision under Order XIII Rule 3 C.P.C for better appreciation of the facts of this case. Order XIII Rule 3 C.P.C. reads as under:-

“The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”

7. In this regard, the docket order of the trial Court cannot be found fault with for the reason that the documents were filed along with the evidence affidavit and when the same were being marked, no objection was raised by defendant No.2 i.e., petitioner herein. On the other hand, the petitioner has cross examined P.W.1 after marking those documents. Further, even in the cross examination, the same has not been brought out with regard to the objection raised by the learned counsel for the petitioner while marking the documents.

8. The submissions of the learned counsel for the petitioner are that the trial Court has lost sight of the endorsement made by the counsel for defendant No.2 on the evidence affidavit stating as under:

“Received notice. Documents cannot be marked as per Section 33 of Evidence Act.”

In spite of the objection raised by the learned counsel for defendant No.2 as above, the trial Court has not rejected the documents. It is further argued that even though the endorsement was made by defendant No.2, the learned trial Court Judge had not looked into the same and allowed



for marking of the documents in the evidence of the plaintiff. This contention cannot be accepted for the reason that even at a subsequent stage of trial, after the cross examination of P.W.1, immediately, no petition was filed under Order XIII Rule 3 C.P.C. On the other hand, the petitioner contends that as per Section 33 of the Evidence Act, the documents ought to have been rejected.

9. At this juncture, it is appropriate to refer to Section 33 of the Evidence Act, which reads as under:

“Section 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 the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second 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.”

10. In fact, the learned counsel for the petitioner has argued that the provision under Section 33 of the Evidence Act would have been considered only in the petition under Order XIII Rule 3 C.P.C., and since the said petition was rejected, the question of going into merits under Section 33 of the Evidence Act in this petition does not arise at this stage.



11. Therefore, the submissions of the learned counsel for the petitioner seems to be that the very rejection order of the learned trial Court Judge is illegal on the ground that once the documents were marked as exhibits, they cannot be demarked.

12. In fact, the admitted facts are that the documents Exs.A-6 and A-9 were filed along with the chief affidavit of the plaintiff. The same were received in the evidence. The plaintiff was cross examined by the defence counsel. Thereafter, one of the defendants appears to have been examined in the matter and the suit was posted for arguments. At that stage, the present application has been filed for rejecting the documents Exs.A-6 and A-9.

13. It is still open to the Court to exercise its discretion under Order XIII Rule 3 C.P.C. at any stage of the suit to reject any document which it considers irrelevant or otherwise inadmissible by recording the grounds of such rejection.

14. Admittedly, the documents Exs.A-6 and A-9 were marked in the evidence of the plaintiff. The suit is of the year 2013. The trial in the suit has almost come to an end. At that stage, the present application is filed by defendant No.2 for rejecting the two documents referred above. Even in the light of the provision under Order XIII Rule 3 C.P.C., the trial Court may, at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible recording the grounds of such rejection. Now the situation is that the petitioner is asking the Court to reject the documents by invoking the provision under Order XIII Rule 3 C.P.C. Since the said provision is available to the Court for rejecting the documents whenever the Court comes to a conclusion that those documents are irrelevant or otherwise inadmissible and since the



documents have already been marked on the admission of the parties, the same cannot be demarked at this stage without considering the relevancy or otherwise.

15. The contention of the learned counsel for the petitioner that defendant No.2 had not given her consent for marking those documents by referring to the endorsement made on the chief evidence affidavit of the plaintiff cannot be accepted for the reason that defendant No.2 has cross examined the plaintiff and nothing was elicited with regard to the objection raised by defendant No.2.

16. However, in the light of the facts and circumstances of this case, since the suit is of the year 2013 and the stage of the case is for arguments and the documents were already marked in the evidence, the trial Court can always look into those documents with regard to their relevancy and evidentiary value. It is also pertinent to note that since the evidence has already been let in by the parties, the rejection of the documents at this stage in the light of the provision under Order XIII Rule 3 C.P.C. may lead to multiplicity of proceedings.

17. Therefore, to avoid multiplicity of proceedings, it is appropriate for the petitioner to proceed with the trial. The trial Court shall consider the evidentiary value of the documents which are already marked and pass appropriate orders.

18. The Civil Revision Petition is disposed of directing the trial Court to dispose of the matter expeditiously taking into consideration the evidentiary value of the documents - Exs.A-6 and A-9 along with other evidence and pass appropriate orders in accordance with law. There shall be no order as to costs.



Miscellaneous Petitions pending. if any, in this Civil Revision
Petition shall stand closed.

// TRUE COPY //

Sd/- K.TATA RAO
ASSISTANT REGISTRAR

[Signature]
SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice GUDISEVA SHYAM PRASAD
(For His Lordship's Kind Perusal)

- To
1. The III Additional District Judge, Kurnool at Nandyal.
 2. 9 L.R. Copies.
 3. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs,
New Delhi
 4. The Secretary, Andhra Pradesh Advocates' Association Library, High Court
Buildings, Amaravati.
 5. One CC to Smt.V.Dyumani, Advocate (OPUC)
 6. One CC to Sri G.Sravan Kumar, Advocate (OPUC)
 7. Two C.D. Copies.

MRC

Phari

HIGH COURT

DATED: 15-03-2019



2019:APHC:15838

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2/5/19

ORDER

CRP NO.41 OF 2019

RS. 10-50

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