



2023:APHC:18717

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO
CIVIL REVISION PETITION NO: 484 OF 2018

Between:

1. Lanka Venkatapathi Rao Son of Ramachandraiah, aged about 50yrs
Employee, Nacharam, Hyderabad

...PETITIONER(S)

AND:

1. Lank Shravya D/o Venkatapathi Rao,Aged 25yrs, Defence Colony,
Sainikpuri, Secunderabad.
2. LANKA HARISH S/O VENKATAPATHI RAO, AGED 23YRS, DEFENCE
COLONY, SAINKIKPURI, SECUNDERABAD.

...RESPONDENTS

Counsel for the Petitioner(s): AMBADIPUDI SATYANARAYANA

Counsel for the Respondents: KOTHAPALLI SAI SRI HARSHA

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

+ CIVIL REVISION PETITION Nos.484 and 6624 of 2018

CRP No.484 of 2018

Between:

Lanka Venkatapathi Rao

... Petitioner

And

\$ Lanka Shravya, D/o Venkatapathi Rao and another

.... Respondents

JUDGMENT PRONOUNCED ON **14.06.2023**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked
to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? - Yes -
-

DR.JUSTICE K. MANMADHA RAO



*** THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

+ CIVIL REVISION PETITION Nos.484 and 6624 of 2018

% **14.06.2023**

CRP No.484 of 2018

Between:

Lanka Venkatapathi Rao

... Petitioner

And

\$ Lanka Shravya, D/o Venkatapathi Rao and another

.... Respondents

! Counsel for the Petitioner : Sri Ambadipudi Satyanarayana

^Counsel for Respondents: Sri K. Sai Sri Harsha

<Gist :

>Head Note:

? Cases referred:



HON'BLE DR. JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION Nos.484 & 6624 of 2018

COMMON ORDER :

As the issue involved in both the civil revision petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

2. Heard Mr. Ambadipudi Satyanarayana, learned counsel appearing for the petitioner and Sri K. Sai Sri Harsha, learned counsel appearing for the respondents.

3. The petitioner herein is the defendant and the respondents herein are the plaintiffs, who filed suit in O.S. No.681 of 2012 for partition of the suit schedule properties into three equal shares and for allotment of one such share to each of the plaintiffs by metes and bounds. The present impugned I.A. No.453 of 2017 in O.S No.681 of 2012 was filed before the II Additional Senior Civil Judge, Vijayawada (for short "the trial Court") by the petitioner herein under Order XVI Rule 1 CPC to issue summons to D.Vijayasri for confronting her evidence and to mark as exhibits.



4. For the sake of convenience, the parties are herein after referred to as arrayed before the trial Court.

5. Admittedly, the plaintiffs in the suit are the children of the defendant and they filed the main suit for partition showing the plaint as A to C schedules in which the petitioner filed written statement. The defence of the petitioner is about non-existence of the ancestral property and also lack of jointness of the family. The petitioner filed certified copy of chief examination of the mother of the plaintiffs, who lived separately from 2003 onwards, deposed in OP No.205 of 2003. At the time of filing documents, it was found that only the chief evidence of Vijayasri was filed. The claim is made as if the property was purchased from out of the income of the ancestral property, therefore, to wipe out the claim, the self statements are required to be received for supporting the defence taken by the petitioner. It is further stated that the certified copy of evidence of mother of plaintiffs was opposed for marking on the ground that she is not the party to the proceedings, as such the mother of the plaintiffs is required to be examined for confronting and marking the evidence recorded in O.S No.25 and 26 of 2008. Therefore, petitioner seeks issuance of summons to the mother of the plaintiffs



namely Vijayasri, D/o. late Vishnu Mohan Rao. After hearing the submissions of both the counsels and after careful examination of witnesses, the trial Court dismissed the application on the ground that the defendant shall confine some factual aspects and hence he is not permitted to summon on the mother of the plaintiffs at the fag end of the suit.

6. On perusing the entire material available on record, this Court observed that, initially the suit in OS No.186 of 2007 was filed before the Senior Civil Judge, Nuzvid. Thereafter, the matter was listed for arguments and when the suit was transferred to Principal Senior Civil Judge's Court Vijayawada, it was renumbered as O.S No.681 of 2012 and listed for defendant's evidence. Thereafter the defendant i.e., the petitioner herein adduced evidence and the case was posted for arguments. Subsequently, I.A No.514 of 2015 was filed for framing of additional issue. But the same was dismissed by the trial Court. Aggrieved by the same, the petitioner has preferred CRP No.5088 of 2015 before this Court and this Court framed additional issue and specifically gave directions to recall DW.1 to adduce evidence with regard to question of joint and constructive possession of the plaint A to



C schedule properties in the light of additional issue. It is observed that that, in view of the orders of this Court, the trial Court ordered for filing additional chief examination affidavit of DW.1 on the additional issue. When the matter was posted for cross examination, the present impugned application was filed under Order XVI Rule 1 CPC before the trial Court. After considering the material available on record and the submissions made by the counsels, the trial Court has dismissed the said I.A.

7. As per **Order XVI Rule 1 CPC**, after issues are settled, the parties shall present in court list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses on such persons for their attendance in Court. Further, Order VI Rule 3 says that for the witnesses direction referred in the list under sub Section 1 of Order VI, if sufficient cause is shown the court may permit a party to adduce evidence.

8. This Court further observed that, when the suit in OS No.681 of 2012 has come up for cross examination, vide order dated 1.10.2018, the trial Court has made the following:



“Both parties called absent. No representation despite conditional order dated 3.8.2018 Stay was granted in this case prior to 18.4.2018. By virtue of orders of Hon’ble Supreme Court of India in Crl.N.No.1375-1376/13 and batch dated 28.3.2018 and as per circular order of Hon’ble High Court in ROC 2573/OP Cell/2018, dated 18.4.2018 the stay will automatically lapse after 6 months. In this case, stay was granted on 2.2.2018. the said stay ceases to operate by 28.9.2018. both the parties have not produced extended speaking order extending the stay order, hence by virtue of orders of Hon’ble Supreme court, in the absence of extension of stay by way of speaking order, further proceedings shall continue in this case. Hence, DW.1 is directed to appear by 8.10.2018.”

9. Aggrieved by the same, the petitioner/defendant preferred another CRP No.6624 of 2018 before this Court.

10. Having regard to the facts and circumstances of the case, this Court observed that, as the issue was framed by this Court, the petitioner/defendant is required to adduce evidence only with regard to possession in view of Order XVIII Rule 18 CPC as the Court is competent to recall any witness at any stage of the suit who has been examined and may subject to law of evidence for the time being in force and put such question to him as Court thinks fit. Therefore, by exercising power under Order XVIII Rule 17 CPC. DW.1 is recalled and permitted to adduce evidence with regard to question of joint and constructive possession of plaint A to C schedule



properties in view of framing of additional issue by this Court and the respondents/ plaintiffs are at liberty to cross examine the witness on the limited point. It is also observed that the petitioner has to adduce evidence only on the issue framed by this Court.

11. In view of the foregoing discussion, this Court is of the considered view that, the documents, which are sought to be confronted with the witness i.e., Vijayasri, who is the mother of the plaintiffs/respondents sought to be examined are certified copies of her evidence in other proceedings and they are relevant and the trial Court ought to have given an opportunity to mark the same through the said witness. But the trial Court without giving any opportunity erroneously dismissed the said application on the ground that the petitioner/defendant was silent in not filing the petition at appropriate stage during the course of defendant's evidence nor filing deposition of Vijayasri at appropriate stage and also held that the petitioner/defendant shall file material in support of his contentions and he is not permitted to seek summons on the mother of the plaintiffs at the fag end of the suit. However, this Court is of the considered view that, deems fit to allow these revision petitions by imposing costs.



12. Accordingly, the Civil Revision Petitions are allowed while setting aside the impugned orders in both the civil revision petitions, directing the petitioner/ defendant to pay costs of Rs.2,000/- (Rupees Two Thousand only) to the credit of O.S.No.681 of 2012, within a period of two (02) weeks from the date of receipt of a copy of this order. Failing which, the impugned orders passed by the trial Court remained in force. Further, the trial Court is directed to complete the trial and dispose of the suit in O.S.No.681 of 2012, as expeditiously as possible, preferably within a period of three (03) months from the date of receipt of a copy of this order.

As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J.

Date : 14 -06-2023

Note : L. R Copy to be marked.

(b/o)Gvl



HON'BLE DR. JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION Nos.484 and 6624 of 2018

Date : 14 .06.2023

Gvl

