

G. Balaiah Vs. G. Ramchander and ors.

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Court : Andhra Pradesh

Decided On : Sep-08-1997

Reported in : 1997(5)ALT463

Judge : D.H. Nasir, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 16, Rule 14

Appeal No. : Civil Revision Petition No. 1671 of 1997

Appellant : G. Balaiah

Respondent : G. Ramchander and ors.

Advocate for Def. : K. Ramakrishna Reddy, Adv. for Respondent No. 1

Advocate for Pet/Ap. : Ramineni Srinivas, Adv.

Disposition : Revision dismissed

Judgement :

D.H. Nasir, J.

1. In this Civil Revision Petition, this Court is concerned with a question whether the executant of an unregistered sale deed could be permitted to be examined as Court witness and whether a Court witness could be cross-examined by the rival parties.

2. The order passed by the District Munsif at Medchal, Ranga Reddy District, on 7-2-1997 in LA. No.806 of 1996 in O.S. No.48 of 1991 held that it was not objectionable for the Court to call Sri D. Lingamaiah to be examined as Court witness and to permit the parties to cross-examine him. The lower Court mainly observed that the respondent/plaintiff claimed possession of the property in question under an unregistered sale deed alleged to have been executed by Sri D. Lingamaiah; although in a suit for simple injunction, according to the learned trial Judge, the question of title need not be decided, but incidentally the title had to be gone through and for that purpose it was not objectionable to the Court to call the said witness to be examined as Court witness.

3. The Respondent No. 1 (plaintiff) claimed title under an unregistered sale deed alleged to have been executed by Sri D. Lingamaiah, but the petitioner (defendant) disputed the title of D. Lingamaiah and questioned his authority to convey the same to the plaintiff/respondent.

4. Under Order XVI Rule 14 of the Civil Procedure Code, it is provided as under:-

'14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.'

5. In Agha Mir Ahmad v. Mudassir Shah, AIR (31) 1944 Privy Council 100. it is held that the power of the Court under Order XVI Rule 14 to examine witnesses on its own motion is discretionary.

6. In P.S. Chetty v. K.E. Reddy, 1988 (1) ALT 279 this High Court observed that:

'.....This power obviously intended in the interests of justice is aimed at clarifying certain situations and remove ambiguities and fill up lacuna and thereby further justice. The parties may refrain from summoning a crucial witness in the event of

their apprehension of full fledged support and in such a situation the Court may summon such person to give evidence to arrive at the correct factual picture and this witness is called a 'Court witness'. Order 16 Rule 14 visualises the initiative by the Court only to examine any person and it is for the Court to consider of its own accord the necessity of invoking power under this rule without propulsion or application by the parties. The exercise of this power is in the nature of 'self-starter' without extraneous pressure or pull.'

It is further observed that:

'.....It is true that the Court is not obligated to invoke the power at the instance of the parties and the parties have no right to move an application under this rule. But however either of the parties can bring to the notice of the Court the necessity for examining any person as Court witness. On such application the Court may scan the totality of facts and circumstances apart from the situations projected by the parties and arrive at an independent conclusion as to the necessity of a Court witness. The parties are not totally barred from bringing to the notice of the Court by application or otherwise and the Court is not bound to take action on the averments or allegations contained in the application and it is the sole discretion of the Court. The application by the parties may be considered as passing on the information so that the Court may examine the issue indepth on the facts and circumstances set out in the application and other aspects.

It is finally observed that:

'.....There is no bar for such application and the move by the parties may be considered as bringing to the notice of the Court and thereupon it is for the Court to invoke power under Order 16 Rule 14 CPC.'

7. In the case before this Court, the learned trial Judge merely observed that in a suit for simple injunction, title need not be decided, but incidentally the same had to be gone through and for that purpose it was not objectionable for the Court to call the witness as Court witness and examine him. In P.S. Chetty's case (2 supra), it is observed that the parties may refrain from summoning a crucial witness in the event of their apprehension of full fledged support and in such a

situation the Court may summon such person to give evidence to arrive at the correct factual picture. In the impugned order before us it is not clarified whether the Court considered it worthwhile to examine the witness in question as Court witness on account of any apprehension expressed by any party to examine him. It is also observed in the aforesaid decision of this High Court in P.S. Chetty's case (2 supra) that the Court may scan the totality of facts and circumstances apart from the situations projected by the parties and arrive at an independent conclusion as to the necessity of a Court witness. No such exercise has been gone through by the learned trial Judge in the case before this Court.

8. However, from the averments made by the learned Counsel for the rival parties before this Court it appears that the plaintiff carries an apprehension that the witness D. Lingamaiah may or may not support his case and, therefore, made the interim application for examining him as the Court witness. With this situation in view, it appears that the trial Court has exercised its discretion to examine the witness as Court witness. There is no reason why this discretion exercised by the trial Court need be assailed so long as it is not pleaded by the opposite party that any prejudice was likely to be caused on that account or that the exercise of jurisdiction was mala fide in any manner.

9. Taking into consideration the ratio laid down in the aforesaid rulings, I believe that in the given facts and circumstances of the case, the discretion exercised by the trial Court cannot be attacked on any proposition of law that the exercise of discretion was not judicious or that it was violative of principles of natural justice.

10. In the above view of the matter, I do not find any necessity to interfere with the impugned decision of the trial Court. Hence, the Civil Revision Petition is dismissed. No costs.