



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

[3311]

**TUESDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 1478/2024

Between:

Kote Krishnudu

...PETITIONER

AND

Mandleam Subba Reddy and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.BUDIGE BHOJA RAAM

Counsel for the Respondent(S):

1.V FAROOK

The Court made the following:

ORDER:

This revision under Article 227 of the Constitution of India is filed against the order, dated 17.05.2024, dismissing I.A.No.800 of 2023 in O.S.No.62 of 2014 on the file of the Court of the Junior Civil Judge, Nandikotkur, filed by the plaintiff under Section 151 CPC to reject the chief affidavit of 1st defendant (DW2).

2. Heard the learned counsel for the parties.

3. The suit was filed for permanent injunction and the suit was opposed by the defendants by filing a written statement. During the course of trial, the 3rd defendant was first examined as DW1 and in his evidence in chief examination, he stated that he is deposing for him and also for the other two defendants 1 & 2. Later, the 1st defendant proposed to give evidence as DW2 and filed affidavit in evidence in chief examination stating that he is giving evidence on his behalf and also on behalf of the other defendants 2 & 3. As such, the plaintiff filed petition in I.A.No.800 of 2023 under Section 151 CPC to reject the affidavit of the 1st defendant/DW2 on the ground that the 1st defendant cannot again give evidence on his behalf and on behalf of DW1/defendant No.3 and such a course is unknown to law.

4. The petition was opposed by filing counter of the respondents/defendants stating that all the defendants have common defence and initially, the defendant No.3 was examined as DW1 and exhibits B1 to B8 were marked and he deposed on behalf of the other defendants as well and that to corroborate the evidence of DW1, the 1st defendant would like to give evidence as DW2, and therefore, there is no substance in the petition and that it was intended only to protract the matter.

5. After hearing both parties, the trial Court dismissed the petition since all the defendants have common defence and that merely because one defendant mentioned that he deposed on behalf of the other defendants also, it is not a bar for the other defendants to give evidence and no injustice would be caused to the plaintiff.

6. Aggrieved by the order, this revision petition was filed.

7. Before this Court, the same kind of arguments were advanced by both the parties as before the trial Court.

8. A fact can be proved by examining any witness or filing a document. The manner of proving a fact is governed by the Evidence Act, 1872 or the Bharatiya Sakshya Adhiniyam, 2023, as the case may be. A fact is said to be proved when, after considering the matter before it, the Court, either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. (Section 3 Evidence Act, 1872= Section 2 of BSA, 2023)

9. So, whether a fact is proved or not depends on the quality but not quantity of evidence. It depends on the trustworthiness of evidence. A fact can be proved by examining/filing one or more witness(es)/ document(s). So the number of witness(es) to be examined is nowhere prescribed. Evidence of even a single witness is sufficient, provided trustworthy, to prove a fact. But evidence of a witness, on corroboration by evidence of other witness(es), renders more believable. Therefore, though corroboration is not required as a matter of law, more than one witness are usually examined as a matter of practice to ensure quality of evidence by eliminating doubt to meet the standard of a prudent man. It cannot be said, therefore, that since the 3rd defendant gave evidence on

behalf of the other defendants also, other defendant(s) can not given evidence.

10. Insofar as serial order of witnesses is concerned, Order XVIII, rules 1, 3 and 3A CPC provide guidance and they are excerpted hereunder:-

1. Right to begin

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

3. **Evidence where several issues.**—Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

3A. **Party to appear before other witnesses.**—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for the reasons to be recorded, permits him to appear as his own witness at a later stage.”

But, amongst the same class of parties, no provision is there to control the order in which they shall be examined. However, it is a practice to first examine those who sail together and then those oppose. Order XVIII, rule 3A prescribes that without permission of Court, a party cannot be examined after examination of witness for him. The said permission can be accorded even after examination of such witness, but before examination of the party. So, even if the 3rd defendant is first examined before the 1st defendant in the present case, there is no legal impediment to examine the 1st defendant thereafter as they have a common defence and all of them have right to give evidence. Just because they give evidence not only for oneself, but also for the others, it cannot be rejected. Except the above limited bar under rule 3-A, there is no other bar in the Code of Civil Procedure to prevent a party from giving evidence. Therefore, this Court does not see any illegality or irregularity in the order impugned. As such, the revision petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B.S.BHANUMATHI, J

04-03-2025
RAR