

**(2013) 07 AP CK 0067**

**Andhra Pradesh High Court**

**Case No:** Civil Revision Petition No. 2743 of 2013

Y. Prabhakara Rao

APPELLANT

Vs

P.S. Anil Kumar, A. Srihari Goud  
and P.S. Ajay Kumar

RESPONDENT

**Date of Decision:** July 19, 2013

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17, Order 18 Rule 3(A), 151

**Citation:** (2013) 5 ALD 319 : (2013) 6 ALT 19

**Hon'ble Judges:** G. Rohini, J

**Bench:** Single Bench

**Advocate:** T. Narayana, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

G. Rohini, J.

The revision petitioner is the defendant No. 3 in O.S. No. 295 of 2005 on the file of the Court of XVII-Addl. Chief Judge-cum-III Addl. Metropolitan Sessions Judge, Hyderabad. The respondent No. 2 herein is the plaintiff who filed the suit for declaration of title in respect of the suit schedule property and recovery of possession. The plaintiff is claiming title to the suit property through defendant No. 3 and the defendant No. 3 in his written statement did not dispute the same. In fact, he supported the case of the plaintiff and as such no issue is settled against the defendant No. 3. It appears that the defendant No. 2 was set ex parte and defendant No. 1 filed written statement contesting the suit claim. During the trial, two witnesses were examined on behalf of the plaintiff as P.Ws. 1 & 2 and they were cross-examined by the counsel for the defendant No. 1. Thereafter, the defendant No. 1 got himself examined as D.W.1 and another witness on his behalf was examined as D.W.2. After the closure of the evidence of defendant No. 1, the

defendant No. 3 came forward to give evidence. That was objected to by the defendant No. 1 and he filed I.A. No. 743 of 2010 with a prayer not to permit the defendant No. 3 to give evidence as he is not contesting the suit claim. The said application was allowed by the Court below by order dated 8.4.2013 and aggrieved by the same the present Civil Revision Petition has been filed by the defendant No. 3.

2. I have heard the learned counsel for the revision petitioner and perused the material available on record.

3. As noticed above, this is a case where the defendant No. 3 is sailing with the plaintiff. Admittedly no relief is claimed against the defendant No. 3 and no issue is settled against him. That being so, the defendant No. 3 has to depose before the commencement of the evidence of the contesting defendants.

4. In identical circumstances, it was held in M. Hymavathi and Another Vs. M. Koteswararao and Others, that if the defendants who are supporting the plaintiff are allowed to lead evidence after the closure of the evidence of the contesting defendants, it would cause prejudice to the interest of the contesting defendants.

5. Reiterating the very same principle and explaining the purport of Order 18 Rule 3(A) of C.P.C. this Court held in Namala Govindu Vs. B. Lakshmann and Another, as under:

.....As per Rule 3(A) of Order 18 CPC, if a party wishes to appear as a witness, he has to examine himself before any other witness on his behalf is examined, unless the Court permits him to appear as his own witness at a later stage. Which of the several defendants in a suit has to lead evidence in the first instance is not laid down by CPC or the Civil Rules of Practice, but where some of the defendants support the case of the plaintiff and where some of the defendants oppose the case of the plaintiff, defendants who support the case of the plaintiff should lead evidence in the first instance before the defendants, who are opposing the case of the plaintiff lead their evidence. As among the defendants who are opposing the claim of the plaintiff they can lead evidence as per their choice. Neither the Court nor the plaintiff can compel any such defendant to lead evidence in the manner stated by him.....

6. In the light of the legal position noticed above, the 3rd respondent who is supporting the case of the plaintiff cannot be permitted to give evidence after the evidence of the defendant No. 1 who is the contesting defendant. Therefore, the Court below has rightly upheld the objection raised by the defendant No. 1/revision petitioner and allowed I.A. No. 743 of 2010 holding that by not opting to give evidence immediately after completion of the evidence on behalf of the plaintiff, the defendant No. 3 had consciously abandoned his right to depose.

7. However, relying upon K.K. Velusamy Vs. N. Palanisamy, it is vehemently contended by the learned counsel for the revision petitioner that in the facts and circumstances of the case the Court below in exercise of the inherent powers conferred u/s 151 of C.P.C. ought to have allowed the revision petitioner to give evidence to meet the ends of justice. It is also contended that the revision petitioner's right to give evidence cannot be denied on mere technicalities.

8. I am unable to accept the contentions of the learned counsel for the petitioner. In K.K. Velusamy Vs. N. Palanisamy, a suit was filed for specific performance of an agreement of sale. The defendant contested the suit claim denying the suit agreement. After the issues were settled and both the parties lead evidence and while the arguments were in progress, the defendants filed an application u/s 151 of C.P.C. to reopen the evidence for the purpose of further examination of P.Ws. 1 & 2 i.e., the plaintiff and the attesting witness. He also filed another application under Order 18 Rule 17 of C.P.C. for recalling P.Ws. 1 & 2 for further cross-examination. The trial Court dismissed the said applications and the said order was confirmed on revision by the High Court. The defendant carried the matter to the Supreme Court contending that the Courts below ought to have seen that the need for further cross-examination of P.Ws. 1 & 2 arose in view of the evidence that came into existence after the closure of their evidence and that his applications were dismissed erroneously without application of mind to the question whether such evidence would be relevant and whether the ends of justice require permission to let in such evidence. In the said facts and circumstances of the case, the Supreme Court held that in the interest of justice and to prevent abuse of process of the Court, the trial Court ought to have considered whether it was necessary to reopen the evidence and if so in what manner and to what extent further evidence should be permitted in exercise of its power u/s 151 of C.P.C.

9. Having carefully gone through the above said decision cited by the learned counsel for the revision petitioner, I am of the view that there is no nexus between the issue raised in the said case and the present case. Therefore, in my considered opinion, the said decision has no relevance to the case. As rightly held by the Court below, the ratio laid down in M. Hymavathi and Another Vs. M. Koteswararao and Others, and Namala Govindu Vs. B. Lakshmanna and Another, squarely applies in all fours to the present case and following the said decisions, the Court below is justified in allowing the application filed by the defendant No. 1.

10. For the aforesaid reasons, the order under Revision which does not suffer from any patent error of fact or law warrants no interference by this Court.

11. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.