
(2014) 08 AP CK 0128

Andhra Pradesh High Court

Case No: CRP No. 1736 of 2014

Amit Kumar Jain

APPELLANT

Vs

M. Shyamlal Jain

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

- Evidence Act, 1872 - Section 33

Citation: (2015) 1 ALD 224 : (2015) 4 ALT 80

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: Venkateshwar Varanasi, Advocates for the Appellant; S. Sridhar for P. Surya Narayana Murthy, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This civil revision petition arises out of order, dated 3.3.2014, in OS No. 1743 of 2004, on the file of the learned III Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad. The respondent filed the above-mentioned suit for eviction of the petitioner from the suit schedule property. During the trial, the petitioner sought to mark the deposition of the respondent given in OS No. 751 of 2005. The petitioner was not allowed to mark the said deposition on the ground that the respondent has not satisfied the requirements of Section 33 of the Indian Evidence Act, 1872 (for short "the Act"). Feeling aggrieved by the said order, the petitioner filed this revision petition.

2. Under Section 33 of the Act, one of the requirements for treating the evidence given in a judicial proceeding as a relevant fact is that the questions in issue were substantially the same in the first as in the second proceeding.

3. OS No. 751 of 2005 in which the respondent has given his evidence and which is sought to be marked in evidence in the present suit related to eviction of the petitioner from the suit schedule property. The petitioner wanted to mark the said deposition in the present suit on the ground that the respondent has made certain admissions in the said suit relating to the tenancy of the building from which the petitioner is sought to be evicted in the present suit.

4. Dealing with Section 33 of the Act, the Supreme in [Union of India \(UOI\) Vs. Moksh Builders and Financiers Ltd. and Others,](#), held that in a given case Section 33 of the Act may not in terms apply where if a party has made certain admissions in the previous proceeding instituted between the same parties, such evidence can be marked as an exhibit in subsequent suit, Though the nature of the suits in the instant case varies, the purpose for which the petitioner sought marking of evidence of the respondent is evidently to plead that in the face of the purported admission made by him that the firm was the tenant and not the petitioner, the suit filed without impleading the firm is not maintainable. In the light of the purpose for which the petitioner seeks to mark the evidence of the respondent, it cannot be said that the said evidence has no relevance to the present suit. In my opinion, the lower Court has misdirected itself in not permitting the petitioner to mark the said deposition of the respondent in OS No. 751 of 2005 in evidence.

5. For the above-mentioned reasons, the order under revision is set aside and the civil revision petition is allowed. It is made clear that this Court has not expressed any opinion on the nature of the evidence given by the respondent which is sought to be marked by the petitioner and the lower Court shall decide the suit without being influenced by any of the observations made in this order.

6. Considering the fact that the suit is of the year 2004, the lower Court is directed to dispose of the same within three months from the date of receipt of a copy of this order. As a sequel to disposal of the civil revision petition, CRP MP No. 2434 of 2014 shall stand disposed of as infructuous.