

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

THURSDAY, THE TWENTY NINTH DAY OF NOVEMBER,
TWO THOUSAND AND EIGHTEEN
PRESENT
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

IA.No. 2 of 2018
IN
CCCA.No. 133 of 2016

IA.Nos. 1& 2 of 2018:

Between:

T.Shekar Chary, S/o. T.Ramaswamy, Occ: Business, R/o. H.No. 5-5-1008, Hindi Nagar,
Goshamahal, Hyderabad, A.P.

Petitioner/1st Respondent
(Respondent No.1 in CCCA.No.133/2016
on the file of the High Court)

AND

1. Bharat Kumar Jain, S/o. Parasmal Jain
2. Shravan Kumar Jain, S/o. Parasmal Jain
(Both are R/o. H.No. 5-2-697/1, Risala Abdulla, Hyderabad)
- Respondents/Petitioners/Appellants
3. T.Narender Chary, S/o. T.Rama Swamy, R/o. 5-3-756, Shankarbagh, Near
Osmangunj, Hyderabad.
4. T.Ramaswamy, S/o. Late T.Narayana Chary, Occ: Business, R/o. 5-3-756,
Shankarbagh, Near Osmangunj, Hyderabad.

Respondents/Respondents 2 & 3

I.A. No.2 of 2018

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to pass orders modifying the order passed in IA.No.1 of 2018 in CCCAMP.No.347 of 2016 in CCCA No.133 of 2016 dated 28-6-2018 by permitting the 1st respondent in the main CCCA No.133 of 2016 to withdraw the amount of suit costs lying in the court below as per its earlier order.

I.A. No.1 of 2018

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to vacate the order passed in CCCAMP.No. 347 of 2016 in CCCA.no. 133 of 2016 dated. 22-08-2016.

CCCA.No. 347 of 2016:

Between:

1. Bharat Kumar Jain, S/o. Parasmal Jain
2. Shravan Kumar Jain, S/o. Parasmal Jain
(Both are R/o. H.No. 5-2-697/1, Risala Abdulla, Hyderabad)

Petitioners
(Appellants in CCCA.No.133/2016
on the file of the High Court)

AND

1. T.Shekar Chary, S/o. T.Ramaswamy, Occ: Business, R/o. H.No. 5-5-1008, Hindi
Nagar, Goshamahal, Hyderabad, A.P.
2. T.Narender Chary, S/o. T.Rama Swamy, R/o. 5-3-756, Shankarbagh, Near
Osmangunj, Hyderabad.
3. T.Ramaswamy, S/o. Late T.Narayana Chary, Occ: Business, R/o. 5-3-756,
Shankarbagh, Near Osmangunj, Hyderabad.
(R.NO.3 is not necessary)

Respondents
(Respondents in-do-)

Petition under Order 41 Rule 5 R/w. Section 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to stay all further proceedings of judgment and decree passed in OS.No. 351 of 2009,. Dated: 24-02-2016 on the file of XIII Addl. Chief Judge, City Civil Court at Hyderabad, pending disposal of CCCA.No.133/2016 on the file of the High Court.

This petition coming on for hearing upon perusing the petition and affidavit herein and the orders of the High Court dated 21-07-2016 and 22-08-2016 made in CCCAMP.No.347 of 2016 and dated 28-6-2018 made in IA.No.1 of 2018, and upon hearing the arguments of Sri Vedula Srinivas, Advocate for the petitioner in IA.Nos.1 & 2 and Respondent No.1 in CCCAMP.No. 347/2016, and Sri. Damodar Mundra, Advocate for the Respondents 1 & 2 in IA.No.1 & 2/2018 and Petitioners in CCCAMP.No. 347/2016, the Court made the following

ORDER:

This application is filed to modify the order dated 28.06.2018 that is passed by this Court in IA No.1 of 2018 in CCCA MP No.347 of 2016 in CCCA No.133 of 2016.

By order dated 28.06.2018, this Court directed the appellants/defendants to deposit the suit costs. On such deposit, the respondents/plaintiffs were permitted to withdraw the same without furnishing any security.

Pursuant to the said order dated 28.06.2018, the appellants have deposited the costs. It transpires from a reading of the affidavit, filed in support of the present application, that when an application was filed in the lower Court for withdrawal of the costs (as per the orders of this Court), the lower Court took an objection that the application is filed only by the first plaintiff and not by both. Hence, the lower Court did not issue the cheque in his favour. This led to the filing of the present application for modification of the order in IA No.1 of 2018.

Sri Vedula Srinivas, learned counsel for the first plaintiff states that the second plaintiff is a mentally unsound and insane person. In the lower Court, the entire proceedings were conducted by the first plaintiff on behalf of himself and second plaintiff, as the second plaintiff is not in a position to swear to any affidavit nor sign on the application. Therefore, he prays that the first plaintiff may be permitted to withdraw the amount that is deposited in the lower Court.

In reply thereto, Sri Damodar Mundra, learned counsel for the appellants/defendants opposed this application. It is his contention that the second plaintiff is not insane person and he was kept in dark about the proceedings. He raised an issue about the very identity of the person and states that the second plaintiff may be called to this Court and after examining him only this Court should pass any order.

This Court is of the opinion that such a course is not countenanced or necessary at this stage.

A reading of the impugned judgment of the lower Court, particularly paragraph No.28 clearly shows that the second plaintiff joined in a mental hospital and was treated there in November 1991. In addition, there was an earlier episode of treatment in 1989. Para-29 of the impugned judgment also shows that the second plaintiff was arrested on 16.02.2008 under certain sections of IPC and also Mental Health Act. Psychiatric treatment was also advised. This finding of the lower Court cannot be totally ignored, particularly at this stage, when the application is only for withdrawal of the costs.

Therefore, IA No.2 of 2018 is allowed. The order dated 28.06.2018 passed in IA No.1 of 2018 is modified and the first respondent in the appeal, who is the first plaintiff in the suit, is permitted to withdraw the amount that is deposited in the lower Court on behalf of the plaintiffs 1 and 2.

This finding is given only for the purpose of withdrawal of costs. The appellants/defendants are at liberty to challenge the finding of mental status of the second plaintiff and are not precluded from raising the same.

Sd/- B.SATYAVATHI
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The XIII Addl. Chief Judge, City Civil Court at Hyderabad.
2. One CC to Sri. Damodar Mundra, Advocate, Advocate(OPUC)
3. One CC to Sri Vedula Srinivas, Advocate(OPUC)
4. One spare copy.

KK

HIGH COURT

DVSSJ

DT: 29-11-2018

ORDER

IA.NO. 2 OF 2018

IN

CCCA.NO. 133 OF 2016

DIRECTION

