

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.1048 and 1207 of 2015

COMMON ORDER :

These two Civil Revision Petitions arise out of the same suit and between the same parties. Therefore, they are being disposed of by this common order.

2. Petitioner in both these Revisions is the plaintiff in O.S.No.2 of 2012 on the file of the I Additional Junior Civil Judge, Madanapalle. She filed the said suit against the respondents for perpetual injunction to restrain them from interfering with her alleged possession and enjoyment of the suit schedule property.

3. Pending suit, petitioner filed I.A.No.3 of 2012 against the respondents seeking temporary injunction restraining the respondents from interfering with her alleged possession and enjoyment of the suit schedule property. She also filed I.A.No.2 of 2012 to restrain the respondents from alienating the suit schedule property.

4. Both the applications were allowed.

5. Challenging the same, respondents 1 to 3 herein preferred CMA.Nos.7 of 2012 and 5 of 2012 respectively, before the II Additional District Judge, Madanapalle.

6. While the said CMAs were pending, the respondents 1 to 3 filed I.A.Nos.820 of 2012 and 819 of 2012 respectively, invoking Order XLI Rule 27 CPC requesting the appellate Court to receive certain documents as additional evidence.

7. In the affidavits filed in support of the said applications, they stated that the documents sought to be filed by them are crucial to prove their case that the suit schedule properties are joint family properties and that in spite of due diligence they could not produce

them, when the I.As were pending in the trial Court.

8. These applications were opposed by the petitioner stating that they are not maintainable and that the trial Court had rightly granted relief to her in the I.As.

9. By order dt.11.06.2014, the appellate Court allowed both the applications and permitted submission of documents filed along with the said applications, subject to their proof and relevancy.

10. The Court below referring to Order XLI Rule 27 (1) (aa) CPC opined that if the documents are received in the appeals no harm, injustice or prejudice would be caused to the petitioner and that in spite of exercise of due diligence, the respondents 1 to 3 could not file the said documents when the matter was tried before the Court below. However, it imposed costs of Rs.200/- to the petitioner and respondents 4 and 5.

11. Challenging the same, these Revisions are filed.

12. Learned counsel for the petitioner sought to contend that the appellate Court ought to have applied the restrictions contained in Order XLI Rule 27 CPC while considering the I.As.No.819 and 820 of 2012 in CMA.Nos.5 of 2012 and 7 of 2012, respectively.

13. I am unable to agree with the said submissions.

14. No doubt, Order XLI Rule 27 CPC permits a party to produce evidence in an appeal filed against a decree in the suit, only if –

(a) the Court from whose decree, appeal is preferred has refused to admit evidence which ought to have been admitted,

[(aa) parties seeking to produce additional evidence, establishes that instead of exercising due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree in appeal against was passed or]

(b) the Appellate Court requires any document to be produced or any

witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

15. In my considered opinion, order XLI would apply only in a regular appeal preferred against a judgment and decree in a suit passed by a trial Court. No doubt Order XLIII Rule 2 CPC makes applicable the rules of Order XLI to appeals from orders also, but it uses the words “As far as may be”. This indicates that the intention of the rule making authority is not to apply every rule governing procedure in the appeals against decrees to appeals filed under Order XLIII of CPC, but to apply only such of those rules as may be required.

16. Similar view has been taken by a learned single Judge of this Court in ***Nafeez Begum v. Salla Jothi and Ors.***^[1].

17. Therefore, in my opinion, since the CMAs pending before the II Additional District Judge, Madanapalle are filed only against orders in interlocutory applications passed during the pendency of main suit, the said Court was not required to apply the standards prescribed by Order XLI Rule 27 CPC and the said Court had every liberty to exercise inherent power under Section 151 CPC taking into consideration the facts and circumstances of the case.

18. The other contention of the counsel for the petitioner was that application for additional evidence has been held by this Court and the Apex Court to be liable to be considered only along with the appeal and it could not have been decided independently and in this regard he placed reliance on judgments in ***State of Rajasthan v. T.N.Sahani and others***^[2] and ***Nandam Rama Rao v. Battu Rama Rao***^[3].

19. These decisions deal with applications filed by appellant in appeals filed against final judgments and decrees in suits invoking Order XLI Rule 27 CPC. When Order XLI Rule 27 CPC itself is not

attracted to an appeal under XLIII CPC with all its vigor, the said principle also will not have any application.

20. In fact in **Nafeez Begum's** case(2 supra) it was held that application for filing additional evidence in Civil Miscellaneous Appeals filed against interlocutory orders in the suit ought to be entertained liberally by entertaining them and while weighting merits of the matter, contents of the documents filed may be looked into and after considering their relevancy, orders may be passed. The Court also observed that since documents in I.As would be marked by consent of respective parties, their relevancy and admissibility need not be considered at the stage of considering, whether or not to allow a party to file such documents, and they can be considered during trial while marking them in the suit through concerned witnesses.

21. In this view of the matter, I do not find any merits in these Civil Revision Petitions and they are accordingly dismissed. There shall be no order as to costs.

22. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

08th September, 2015.
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[\[1\]](#) 2005(3) ALT 668

[\[2\]](#) 2001(10) SCC 619

[\[3\]](#) 2013(6) ALD 754