

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.571 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Order XLIII Rule 1 CPC, assailing the judgment and decree dated 31.3.2005 passed by the II Additional District Judge, Khammam in A.S. No.9 of 2002, wherein and whereby the matter was remanded to the trial court i.e., the Court of Principal Junior Civil Judge, Khammam, to pass judgment afresh in O.S.No.507 of 1998 after allowing both parties to adduce further evidence including the documents filed along with I.A.No.134 of 2005 in A.S.No.9 of 2002.

2. Sri M.V.S. Suresh Kumar, learned counsel for the appellant-defendant No.1 submitted that the first appellate court having given a specific finding on Ex.A2, photocopy of household card, ought not to have remanded the matter to the trial court. He further submitted that the order of the first appellate court is not sustainable either on facts or on law. ***Per contra***, Sri G.L. Narasimha Rao, learned counsel for the respondent Nos.1 to 7-plaintiffs submitted that the appeal itself is not maintainable as the appellant himself filed I.A.No.134 of 2005 to receive certain documents as additional evidence. He further submitted that the first appellate court ought not to have expressed any opinion with regard to the validity or otherwise of the documents while remanding the matter to the trial court.

3. In view of the rival contentions, the only point that arises for consideration is:

Whether the first appellate court is justified in remanding the matter to the trial court or not?

Point:

4. The facts leading to filing of the present appeal are briefly as follows: the respondent Nos.1 to 7 herein filed O.S.No.507 of 1998 on

the file of the Principal Junior Civil Judge, Khammam against the appellant herein and respondent Nos.8 to 10, to declare them (plaintiffs) as legal heirs of Vupperla Mangaiah. In the trial court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A1 and A2 were marked. On behalf of the defendants, D.Ws.1 and 2 were examined and Exs.B1 to B9 were marked. Basing on the oral, documentary evidence and other material available on record, the trial court arrived at a conclusion that the plaintiff Nos.1 to 7 are the legal heirs of the deceased Vupperla Mangaiah, and decreed the suit as prayed. Feeling aggrieved by the judgment and decree dated 11.9.2001 in O.S.No.507 of 1998, defendant No.1 preferred A.S.No.9 of 2002 on the file of the II Additional District Judge, Khammam. During the pendency of the appeal, defendant No.1 filed I.A.No.134 of 2004 to receive certain documents as additional evidence. The first appellate court allowed the I.A., and remanded the matter to the trial court as mentioned supra.

5. The only grievance of the appellant is that the first appellate court, while arriving at a conclusion that Ex.A2 is not sufficient to hold that plaintiff Nos.1 to 7 are legal heirs of Vupperla Mangaiah, ought to have allowed the appeal instead of remanding the matter to the trial court. If that is so, this court is unable to understand why the appellant himself filed I.A. No.134 of 2005 under Order XLI Rule 27 CPC. Under Order XLI Rule 28 CPC, the appellate court may either take additional evidence, or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence. When the first appellate court allowed the petition and remanded the matter, the appellant has taken 'U' turn and found fault with the first appellate court for giving opportunity to the respondent Nos.1 to 7 also to adduce further evidence. While remanding the matter, if the opportunity was given to the appellant only to adduce further evidence, it may cause prejudice to the rights of the respondent. The first appellate court has

given the opportunity to both parties to lead further evidence in order to safeguard the interest of both parties. The first appellate court has not committed any irregularity or illegality while remanding the matter to the trial court.

6. In the result, the appeal is dismissed. The trial court is hereby directed to dispose of O.S.No.507 of 1998 afresh in accordance with law, after giving opportunity to both parties to adduce further evidence, without being influenced by the observations made by the first appellate court. Since the matter is of the year 1998, the trial court shall dispose of the suit as expeditiously as possible provided both parties cooperate with the court. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 29.06.2015

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