

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.937 of 2013

JUDGMENT:-

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of the Civil Procedure Code by the appellant/plaintiff, is directed against the decree and judgment dated 28.06.2013 of the learned I Additional District Judge, Guntur passed in A.S.No.469 of 2009, whereby, the learned I Additional District Judge, while allowing the said appeal, had set aside the decree and judgment dated 15.10.2009 of the learned Senior Civil Judge, Bapatla, passed in O.S.No.106 of 2002 and remanded the matter to the trial Court for fresh disposal in accordance with law.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff and the learned counsel for the respondents/defendants. I have perused the material record.

3. By the impugned judgment, the Court below, while allowing the appeal and setting aside the decree and judgment of the trial Court, had remanded the said suit to the trial Court for fresh disposal in accordance with law and as per the observations in the said judgment.

4. The learned counsel for the appellant/plaintiff would submit that the Court below had erroneously passed the impugned judgment without noticing the directions of this Court in the order dated 28.03.2013 passed in C.R.P.No.6605 of 2012. On the other hand, the learned counsel for the respondents/defendants supported the judgment of the Court below.

5. A perusal of the order of this Court dated 28.03.2013 passed in C.R.P.No.6605 of 2012 makes it clear that while allowing the said Civil Revision Petition by setting aside the order impugned therein, this Court had allowed I.A.No.1612 of 2011 and observed that respondents 3 to 5 therein shall stand added as respondents 3 to 5 in A.S.No.469 of 2009.

6. Thus, as per the orders of this Court in the aforementioned C.R.P., the Court below ought to have brought on record, the respondent nos.3 to 5 in A.S.No.469 of 2009 and ought to have issued notices to them and then only the Court below ought to have decided the appeal on merits. Instead and without following the orders of this Court in the aforementioned C.R.P., the Court below had allowed the appeal and had set aside the decree and judgment of the trial Court and remanded the matter to the trial Court for fresh disposal on merits. Therefore, the impugned judgment, which was passed without noticing the order of this Court in the aforementioned C.R.P., and without complying with the directions contained therein, is unsustainable under facts and in law. Therefore, this Court is of the view that there is acceptable merit in the contentions of the learned counsel for the appellant/plaintiff and the appeal deserves to be allowed.

7. Accordingly, the Civil Miscellaneous Appeal is allowed and the decree and judgment dated 28.06.2013 of the learned I Additional District Judge, Guntur passed in A.S.No.469 of 2009 are hereby set aside. The said appeal is remitted to the Court of I Additional District Judge, Guntur for due compliance of the orders dated 28.03.2013 passed by this Court in C.R.P.No.6605 of 2012 and deciding the appeal afresh on merits and in accordance with the procedure established by law after issuing notices to the impleaded respondent nos.3 to 5. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murthi, J

27th August, 2015
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