

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.600 of 2008

JUDGMENT:

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This Civil Miscellaneous Appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 by the appellant/defendant is directed against the decree and judgment dated 25.04.2008 of the learned District Judge, Karimnagar passed in A.S.No.76 of 2006, whereby learned District Judge while allowing the said appeal had set aside the decree and judgment dated 21.11.2005 of the learned Principal Junior Civil Judge, at Karimnagar passed in O.S.No.507 of 2002 and had remanded the suit to the trial Court with a direction to permit the plaintiff to adduce additional evidence as sought for in I.A.No.401 of 2008 filed in the appeal suit and give an opportunity to the sole defendant to adduce rebuttal evidence, if any, and dispose of the suit afresh in accordance with law.

2. I have heard the submissions of the learned counsel for the appellant/defendant. I have perused the material record.

3. The parties in this civil miscellaneous appeal shall hereinafter be referred to as 'the defendant/appellant' and 'the plaintiff/respondent' for convenience and clarity.

4. The facts necessary for consideration, in brief, are as follows:

The plaintiff had brought a suit against the sole defendant for perpetual injunction in respect of two extents of land viz., Ac.0.34 ½ guntas of land in Sy.No.496/B and Ac.1.12 guntas in Sy.No.498/A situated in Thimmapur village in Karimnagar District, more fully described in the schedule annexed to the plaint. The defendant having filed a written statement had resisted the suit. After full-fledged trial and on merits, the trial Court had dismissed the suit of the plaintiff. The aggrieved plaintiff had preferred the first appeal before the District Court, Karimnagar. Before the first appellate court, the

plaintiff had filed I.A.No.401 of 2008 under Order XLI Rule 27 of the Code requesting to receive the 'pahani patrikas' of the suit year and also of the years prior to and subsequent to the suit year as additional evidence in order to establish his pleaded case that he was and is in possession of the suit schedule property. The Court below after adverting to the pleadings of both the sides and the details of the exhibits marked as exhibits A1 to A6 and B1 to B6 had noted that the suit was filed in the year 2002 and that none of the pahanies filed by the plaintiff in 'A' series relate to the suit year and that the exhibits B1 to B4, like the documents of the plaintiff, also do not relate to the suit year and that though exhibit B5, pahani for the year 2001-2002 relates to the suit year, it only shows the name of the defendant as possessor and owner in respect of Ac.1.09 ½ gunts in Sy.No.498/A, but, that document was issued by the Village Secretary (Panchayat Karyadarshi), but, not by the Mandal Revenue Officer. Having thus noted that there is no documentary evidence of reliable character evidencing possession of any one of the parties as on the date of the suit and during the suit year, and, in view of the further fact that an application to receive additional evidence was filed by the plaintiff, the Court below thought it appropriate to give an opportunity to the plaintiff to adduce additional evidence and the defendant to adduce rebuttal evidence before arriving at a just and final decision in the suit; and, therefore, while disposing of the appeal, the Court below had allowed the interlocutory application filed by the plaintiff for receiving additional evidence and remanded the suit to the trial Court with a direction to the trial Court to permit the plaintiff to adduce additional evidence and also give an opportunity to the defendant to adduce rebuttal evidence, if any, and dispose of the suit afresh in accordance with law.

5. Aggrieved of the said judgment of remand passed in the first appeal suit, the defendant had preferred this Civil Miscellaneous Appeal.

6. The learned counsel for the defendant would contend as follows: "The finding of the Court below that the documents filed by the plaintiff along with the petition to receive additional evidence contain a document pertaining to the suit year and that the contents of the said document are in conflict with

exhibit A5, pahani of the same year and that as such, it is appropriate to give an opportunity to the parties to adduce additional evidence to enable the trial court to arrive at a just decision is a finding without jurisdiction. The observations in the judgment and also the order of the court below made in I.A.No.401 of 2008 allowing the said application filed by the plaintiff to receive additional evidence are erroneous. The grounds on which additional evidence is permitted do not satisfy the requirements of Order XLI Rule 27 of the Code. The Court below has not given valid reasons for admitting additional evidence in the first appeal. Additional evidence can be permitted only if the party establishes that notwithstanding the exercise of due diligence, evidence sought to be adduced as additional evidence was not within the knowledge of the party. The court below without appreciating the scope of its jurisdiction had allowed the plaintiff to adduce additional evidence without taking into consideration the exhibit B5, pahani of the suit year, which shows the ownership and possession of the suit schedule property, by simply observing that it was issued by the Village Secretary, but, not the Mandal Revenue Officer. Such a finding is irrelevant and is not legally sustainable as the Village Secretary is also competent to issue pahani patrikas, as per the provisions of ROR Act. The court below ought to have seen that exhibit B1 to B5 clearly established the possession of the defendant over the subject property. Therefore, remand of the suit to the trial court is not warranted, more particularly, when there is sufficient evidence to arrive at a just decision in the suit for perpetual injunction. The judgment remanding the suit to the trial court gives an opportunity to the plaintiff to fill up the lacunae in the evidence and therefore, the remand order is unjustifiable. Therefore, the civil miscellaneous appeal may be allowed and the impugned decree and judgment and also the orders permitting the plaintiff to adduce additional evidence be set aside and the first appeal be sent back to the first appellate court for disposal of the first appeal on merits after considering the oral and documentary evidence already brought on record.”

6.1 In support of the contention that the plaintiff did not make out valid and sufficient grounds to accord permission to adduce additional evidence, the

learned counsel for the defendant had placed reliance on the following decisions: (i) **Hameed (D) by L.Rs and others v. Kummottummal Kunhi P.P.Amma (D) by L.Rs and others**^[1] and (ii) **K.R.Mohan Reddy v. M/s. Net Work Inc. rep. Tr. M.D**^[2].

6.2 I have noted the facts that lead to the filing of this civil miscellaneous appeal and also the submissions of the learned counsel for the defendant. I have carefully gone through the material record including the pleadings of both the sides and the oral and the documentary evidence brought on record.

7. The plaintiff brought the suit against the defendant for perpetual injunction in respect of two items of property, viz., Ac.0.34 guntas in Sy.No.496/B and Ac.1.12 guntas in Sy.No.498/A. There is now no dispute with regard to item no.1 as the defendant had fairly conceded even before the court below that the said land belongs to the plaintiff. Now, the dispute is confined to the 2nd item in an extent of Ac.1.12 guntas of land in Sy.No.498/A. Even in regard to this item, there is no dispute that there is an oral partition of the lands and that in that partition, this disputed 2nd item fell to the share of the plaintiff. However, the defendant's contention is that the plaintiff had exchanged this item of land for another item of land of Ac.0.34 guntas in Sy.No.496/B in a transaction of exchange with his brother, by name, Ailaiah and that the said Ailaiah having got this disputed item no.2 of the land in Sy.No.498/A from the plaintiff in exchange, had, in turn, gave it in exchange to the defendant for another extent of land and that the said exchanges took place in the year 1985 and ever since the said exchanges, the plaintiff lost right over the said item of land, i.e., Ac.1.12 guntas in Sy.No.498/A and that consequently the defendant has been in possession and enjoyment of the same. However, the plaintiff had denied exchanges pleaded by the defendant. Therefore, from the contentions, it is clear that the plaintiff's title originally in respect of Ac.1.12 guntas in Sy.No.498/A is admitted. The truth or otherwise of the transactions of exchanges viz., one between the plaintiff and his brother Ailaiah and the other between Ailaiah

and the defendant which took place in the year 1985 are aspects for consideration apart from the aspect of khas possession over the disputed item no.2 as on the date of the suit and at all relevant times. Both the courts below did not consider the aspect as to the contentions in regard to oral exchanges of immovable property of the value exceeding Rs.100/- could be countenanced or not. No document relating to Ac.0.34 guntas in Sy.No.596/B is filed and exhibited to show whether or not the plaintiff had got the said land in exchange of the disputed item no.2 of the plaint schedule property and also to show that the said land of Ac.0.34 guntas in Sy.No.596/B stands in the name and in the possession of the plaintiff after the said exchange stated to have taken place in the year 1985. Similarly, no documents are filed and exhibited to show the right, title, interest and possession of the brother of the plaintiff by name Ailaiah over the land which the defendant had stated to have given to him in exchange in the year 1985. Mere filing of the copies of the pahani patrikas under exhibits A2 to A6 by the plaintiff and under exhibits B1 to B5 by the defendant, in the facts and circumstances of the case, therefore, does not clinch the issue involved either way. It is note worthy that the plaintiff had filed exhibit A1, the title deed book issued in the name of the plaintiff showing his ownership in respect of Ac.1.09 guntas of land in Sy.No.498/A, i.e., in respect of the disputed land, which was issued in the year 1985; and, according to the plaintiff, the defendant had remained silent even though exhibit A1, title deed was issued to the plaintiff by the revenue department. Therefore, there are many aspects of the matter, which remained unexplored, and which require examination in detail, while resolving the contentious issues. Hence, not only for the reasons assigned in the impugned judgment but also for the reasons stated supra, the suit requires fresh disposal on merits after giving an opportunity to both the sides to adduce additional evidence in support of their respective pleadings and contentions.

8. Coming to the contention that the court below had permitted the plaintiff to adduce additional evidence even though no valid and sufficient grounds are made out, it is worthy to note that under Order XLI Rule 27 of the Code

adduction of additional evidence can be permitted under circumstances enumerated there under. As per the decision in **K.R.Mohan Reddy v. M/s. Net Work Inc. rep. Tr. M.D** (2nd supra), power of appellate court to pass any order there under is limited and unless the appellate court arrives at a finding that one or the other conditions enumerated in the provisions of law are satisfied, the appellate court is precluded from exercising its jurisdiction. In the decision in **Hameed** (2nd supra), the facts show that a suit was brought for recovery of possession based on title and the said suit was dismissed by the trial Court holding that the defendants were in continuous and uninterrupted possession of suit schedule property. However, the High Court had remitted the suit to the trial Court for fresh consideration without indicating as to what were the questions of fact and law that were required to be decided and what were the circumstances upon which it found itself unable to arrive at a just decision in the matter. Therefore, considering the said aspects and also the fact that sufficient opportunity was available to the plaintiff in the cited case to produce the documents before the trial court, the Supreme Court had held that the High Court should not have remanded the matter giving liberty to plaintiffs to produce documents in order to fill lacuna in the evidence. This decision was rendered purely on facts peculiar to the case. It is apt to note that Clause (a), (aa) and (b) of sub-rule (i) of Rule 27 of Order XLI of the Code deal with three different situations. The present situation is not covered by clause (a). The case of the plaintiff is that the copies of pahani patrikas, which are produced with a petition to receive additional evidence were given to the counsel, but the same were not filed into Court by the counsel and that in the circumstances, all the necessary documents could not be produced before the trial court and that the said documents are essential to prove the case of the plaintiff and hence, they may be received as additional evidence. The court below, in its detailed order passed in the interlocutory application filed for receiving additional evidence had adverted to certain of its findings in the judgment made in the first appeal and had further observed that the documents filed as additional evidence are necessary to arrive at a just decision in the matter in its considered opinion and had, hence, permitted the plaintiff to adduce

additional evidence. According to the plaintiff, the documents though were obtained and were given to the counsel; the same were not produced into the trial Court by the counsel. Therefore, the case of the plaintiff that the documents could not be produced before the trial Court for the fault of counsel and for no fault of his, also falls in the latter part of clause (aa) of sub-rule (i) of Order 27 dealing with a situation where the party seeking to produce additional evidence was unable to produce the same before the trial Court even after exercise of due diligence.

9. On a careful consideration of the facts and circumstances, this Court finds that there is no error committed by the court below in permitting the plaintiff to adduce additional evidence and in remitting the suit to the trial court with certain directions. Having regard to the reasons now assigned in this Judgment and having carefully considered the reasons assigned by the court below in the impugned judgment, this court is satisfied that this is a fit case where the suit requires fresh disposal by the trial court after giving an opportunity to both the sides for adducing additional evidence. Viewed thus, this Court finds that there is no merit in this Civil Miscellaneous Appeal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. It is needless to mention that the trial Court shall dispose of the suit purely on its merit uninfluenced by the observations, if any, made either in this Judgment or of the 1st appellate Court.

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

M. SEETHARAMA MURTI, J

27th July 2015

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[\[1\]](#) 2006 (6) SCJ 378

[\[2\]](#) AIR 2008 SUPREME COURT 579