

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

C.M.A.No.492 of 2014 & C.R.P.No.4799 of 2014

Date : 26-02-2015

C.M.A.No.492 of 2014

Between:

Bande Krishna Reddy ..

Appellant

And

Poloju Yadaiah and others ..
Respondents

Counsel for appellant : Mr. B. Shiva Kumar

Counsel for respondent No.1 : Mr. A. Abhishek Reddy

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C.R.P.No.4799 of 2014

Between:

Bande Krishna Reddy ..

Petitioner

And

Poloju Yadaiah and others ..
Respondents

Counsel for petitioner : Mr. N. Vasudeva Reddy

Counsel for respondent No.3 : Mr. A. Abhishek Reddy

The Court made the following:

COMMON ORDER

C.M.A.No.492 of 2014 arises out of Judgment and decree dated 8-10-2013 in A.S.No.250 of 2009 on the file of the learned V Additional District Judge (FTC), Ranga Reddy District at L.B. Nagar.

C.R.P.No.4799 of 2014 arises out of order dated 20-10-2014 in I.A.No.326 of 2014 in O.S.No.134 of 1998 on the file of the learned Principal Junior Civil Judge, Ranga Reddy District at Ibrahimpatnam.

I have heard Mr. B. Shiva Kumar, learned counsel for the appellant and Mr. A. Abhishek Reddy, learned counsel for respondent No.1 in C.M.A.No.492 2014 and respondent No.3 in C.R.P.No.4799 of 2014 and Mr. N. Vasudeva Reddy, learned counsel for the petitioner in C.R.P.No.4799 of 2014.

For convenience, the parties are referred as they are arrayed in the suit.

The suit was filed by the appellant in C.M.A.No.492 of 2014 who is also the petitioner in C.R.P.No.4799 of 2014, for perpetual injunction against the defendants, their agents

etc., claiming through them for restraining them from causing further construction of houses over the suit schedule property as shown in the sketch plan and for mandatory injunction against the defendants, their agents etc., claiming through them to remove the houses over the suit schedule property. The defendants have filed written statement opposing the said reliefs. However, by Judgment and decree dated 17-8-2009, the learned Junior Civil Judge has decreed the suit as prayed for. Feeling aggrieved by the said Judgment and decree, defendant No.3 has filed A.S.No.250 of 2009 before the learned V Additional District Judge (FTC), Ranga Reddy District, at L.B.Nagar. The lower appellate Court by the above noted Judgment and decree has allowed appeal, set-aside the Judgment and decree of the lower court and remanded the case for consideration of the matter afresh giving liberty to the plaintiff to file an application for amendment of the plaint praying inter alia for declaration of his title. After remand, the plaintiff has filed I.A.No.326 of 2014 for amendment of the plaint so as to claim the relief of declaration of title. The trial court, by its order dated 20-10-2014 has dismissed the said I.A. Feeling aggrieved by the said order, the plaintiff has filed C.R.P.No.4799 of 2014.

The learned counsel for the appellant/plaintiff appearing in C.M.A.No.492 of 2014 has strenuously contended that the whole reasoning on which the lower

appellate Court has remanded the case is not sustainable. He has however alternatively submitted that even if the lower appellate Court was justified in remanding the case, it should have confined the remand only to defendant No.3, who alone has filed the appeal.

Mr. N. Vasudeva Reddy, learned counsel for the petitioner in C.R.P.No.4799 of 2014, submitted that the trial Court has committed a serious error in dismissing his application for amendment of the plaint by holding that the said amendment application is barred by limitation.

Mr. A. Abhishek Reddy, learned counsel for defendant No.3, sought to sustain the order of remand passed by the lower appellate Court.

From a perusal of the Judgment of the lower appellate Court, it is evident that one of the reasons why it has remanded the case to the trial Court was to find out whether the disputed houses were constructed in the suit schedule property, which is claimed to be grama kantham land by defendant No.3, or outside it. Admittedly, the suit schedule property was not specifically identified and no finding in that regard was rendered by the trial Court. Therefore, in my opinion, the lower appellate Court was justified in remanding the case. However, as rightly pleaded by the learned counsel for the appellant, the lower appellate Court should have confined the remand only to defendant No.3. It is not the pleaded case of the defendants that they have a

common cause. The plaintiff claimed reliefs against the defendants in respect of different parcels of land over which constructions were allegedly made. Defendant No.3 has not filed the appeal in a representative capacity on behalf of all other defendants. As the cause in the suit is indivisible, if the other defendants have not filed the appeal, they cannot be allowed to have the benefit of remand as the Judgment and decree in so far as they are concerned, has attained finality. Therefore, the remand of the case at the behest of defendant No.3 cannot be allowed to be a providence for the other defendants who failed to question the Judgment and decree of the trial Court. On the above analysis, I hold that the remand of the case by the lower appellate Court shall be confined only to defendant No.3 and the Judgment and decree of the lower appellate Court shall remain in force qua all other defendants.

Coming to C.R.P.No.4799 of 2014, the whole purport of the order of the lower Court by which I.A.No.326 of 2014 was dismissed by it was that the relief of declaration of title is barred by limitation. In my opinion, it was premature for the lower Court to render such a finding as the aspect of limitation is a mixed question of law and fact and unless the parties adduce their evidence, no conclusive finding can be rendered with regard to the same. Therefore, the lower Court ought to have allowed the application subject to the

right of defendant No.3 to raise objection regarding limitation and in such an event, the lower Court shall give the both parties an opportunity of adducing evidence and render finding on this aspect while disposing of the suit. In this view of the matter, the order of the lower Court is set-aside and I.A.No.326 of 2014 is allowed, with the direction to the lower Court to frame an issue on the aspect of limitation and allow the parties to adduce evidence with regard thereto.

In the result, C.M.A. is partly allowed to the extent indicated above. The Civil Revision Petition is allowed.

As a sequel to the disposal of the cases, CMAMP No.668 of 2014 in C.M.A.No.492 of 2014 and CRPMP No.6540 of 2014 in C.R.P.No.4799 of 2014 are disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 26-02-2005

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