

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5501 of 2015

ORDER:

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Heard and perused the records.

The present revision is filed under Article 227 of the Constitution of India assailing the order dated 04.11.2015 passed in I.A.No.477 of 2015 in A.S.No.2 of 2015 on the file of the II Additional District Judge, Karimnagar at Jagtial, wherein the application under Order 41 Rule 27 of C.P.C. was rejected.

The petitioner/plaintiff filed O.S.No.36 of 2004 on the file of the Senior Civil Judge, Jagtial, seeking perpetual injunction against the respondents/defendants restraining them from interfering with peaceful possession and enjoyment of the suit schedule property. The said suit was dismissed on merits on 24.12.2014. Challenging the said judgment, the petitioner herein preferred A.S.No.2 of 2015 on the file of II Additional District Judge, Karimnagar at Jagtial. Pending the said application, the petitioner filed I.A.No.477 of 2015 requesting the Court to take certain documents as additional evidence which was rejected on the ground that no explanation was given as to why the said documents were not filed in the suit. Aggrieved by the same, the present revision is filed.

Relying upon the judgment of this Court in ***Nandam Rama Rao Vs. Battu Rama Rao***^[1] and the judgment of the Apex Court in ***M/s.Eastern Equipment and Sales Limited Vs. ING. Yash Kumar Khanna***^[2], the counsel for the petitioner submits that the learned District Judge erred in dismissing the application, but the same was strenuously opposed by the learned counsel for the respondents.

A perusal of the material on record would show that O.S.No.36 of 2006 seeking perpetual injunction came to be filed by the petitioner seeking injunction against the respondents from interfering with the property. The said suit was dismissed and thereafter aggrieved by the said order, the petitioner preferred A.S.No.2 of 2015 before the II Additional District Judge, Karimnagar, Jagtial. Pending the said application, the petitioner filed I.A.No.477 of 2015 requesting the Court to take certified copies of Form 13 B, 13 C, Pahanies for the years 1991-1992, 1994-1995, 2000-2001, 2005-2006 and 2009-2010, original title deed, certified copy of FIR in Crime No.25 of 2015 and two digital photographs concerning the suit property as additional evidence.

The issue as to whether the appellate Court is right in rejecting the request of this nature came up for consideration before the Apex Court in ***M/s.Eastern Equipment and Sales Limited Vs. ING. Yash Kumar Khanna(supra)*** wherein the Court held as under:

“We have heard learned counsel for the parties and after considering the facts and circumstances of the present case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Code of Civil Procedure was filed ought to have been taken by the appellate Court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Code of Civil Procedure was rightly rejected by the Appellate Court as well as by the High Court, we set aside the order of the High Court as well as of the appellate Court rejecting the application under Order 41 Rule 27 of the Code of Civil Procedure and we direct that the appellate Court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Code of Civil Procedure on merits within a period of three months from the date of supply of a copy of this order to the appellate court. The appeal is allowed to the extent indicated above. There will be no order as to costs.”

Similarly, in ***Nandam Rama Rao Vs. Battu Rama Rao(supra)***

this Court after referring the judgment of the Apex Court in ***State of Rajasthan Vs. T.N.Sahani and others***^[3] held that the application under Order 41 Rule 27 of C.P.C. should be decided along with the appeal and cannot be taken up independently without taking up the appeal.

In view of the judgments referred to above, I am of the view that the trial Court erred in rejecting the application made under Order 41 Rule 27 of C.P.C. at this stage.

Hence the C.R.P. is allowed, the order under challenge is set aside and the trial Court is directed to consider the I.A. filed by the petitioner under Order 41 Rule 27 of C.P.C. along with the appeal (at the time of hearing of the appeal). No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

05.02.2016

vhb

^[1] 2013 (6) ALD 754

^[2] AIR 2008 SC 2360

^[3] (2001) 10 SCC 619