

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1325 OF 2008

Dated 10-8-2016

Between:

P.Venkata Rao and others.

..Appellants.

And:

G.Kalavathi and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1325 OF 2008

JUDGMENT:

This appeal is preferred questioning the judgment dated 21-2-2008 in A.S.No.329 of 2005 on the file of VIII Additional District and Sessions Judge (Fast Track Court), Vijayawada whereunder the first appellate court remanded suit O.S.No.771 of 2001 to the trial court giving liberty to the plaintiff to lead rebuttal evidence in respect of the will by framing additional issue.

Appellants herein are defendants in the above referred O.S.No.771 of 2001. Parties are herein after referred to as plaintiff and defendants for the sake of convenience.

Plaintiff filed suit for partition seeking 1/9th share in the plaint schedule properties and trial court on a consideration of oral and documentary evidence of both parties dismissed the suit accepting the will pleaded by the defendants. Questioning the same, plaintiff preferred appeal and the appellate court after considering the material on record felt that additional issue is to be framed and accordingly directed the trial court to frame additional issue with regard to the genuineness of the will and to give opportunity to both parties to lead evidence

particularly to plaintiff to adduce rebuttal evidence and decide the matter in terms of direction given in I.A.No.203 of 2007 and I.A.No.204 of 2007.

Advocate for appellants submitted that appellate court without considering the reasoned judgment of trial court without any material remitted the matter and the same is not in accordance with law the provision under Order 41 Rule 23 of C.P.C. He further submitted that lower appellate court failed to see that plaintiff failed to raise any issue with regard to will but only at the stage of appeal, he raised objection which the appellate court has accepted. He further submitted that appellate court grossly erred in remanding the matter through order of the appellate court dated 21-2-2008 is liable to be set aside.

I have perused the impugned order dated 21st February, 2008. Now the point that would arise for my consideration in this appeal is whether the order of the court below is proper, legal and correct?

POINT:

As seen from the impugned judgment, plaintiff appears to have filed a petition in I.A.No.41 of 2007 to frame additional issue and requested for remand of case to trial court to adduce rebuttal evidence on will. I.A.No.41 of 2007 was allowed on 29-1-2007 and thereafter, the appeal was taken up and in pursuance of orders in I.A.No.41 of 2007, the appellate court remanded suit under Order 41 Rule 27 and Section 151 C.P.C. to lower court with a direction to frame additional issue whether will dated 2-2-1985 is true, valid and genuine and decide the same after giving liberty to adduce evidence particularly to plaintiff. Admittedly, defendants have not challenged order dated 29-1-2007 in I.A.No.41 of 2007, through which plaintiff specifically pleaded for framing of additional issue and remand of the case. As per Order 41 Rule 23, if the appellate court feels that a additional issue is to be framed, it can remit the case to the trial court for that

purpose. Here the first appellate court rightly applied its power under Order 41 Rule 23 C.P.C. and I do not find any wrong in the impugned order dated 21-2-2008. Further since the suit is of the year 2001, I feel that a direction be given to the trial court to expedite the trial and dispose of it within specified time.

For these reasons, appeal is dismissed directing the trial court to dispose of O.S.No.771 of 2001 as expeditiously as possible preferably within three months from the date of receipt of a copy of this order. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 10-8-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs