

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL NO.140 OF 2007

JUDGMENT:

The defendants in O.S.No.152 of 1996 on the file of the Junior Civil Judge, Adoni and respondents in A.S.No.10 of 2000 on the file of the Senior Civil Judge, Adoni, preferred this second appeal under Section 100 of the Civil Procedure Code, challenging the decree and judgment passed by the Appellate Court, reversing the judgment passed by the Trial Court.

For convenience of reference, the ranks given to the parties in the Trial Court will be adopted throughout the judgment.

For limited purpose of deciding the real controversy, the relevant facts are as follows:

The appellants 1 & 2 herein /defendants 1 & 2 in O.S.No.152 of 1996 filed O.S.No.104 of 1993 for grant of permanent injunction and obtained an interim injunction under Order 39 Rule 1 & 2 and later, the defendants 1 & 2 allegedly encroached the suit property and therefore the plaintiffs were forced to file the suit for declaration of their title based on Ex.A-1 - settlement deed and for recovery of possession and consequential permanent injunction, the defendants besides raising several contentions. One of the contentions raised by them was that they perfected the title by adverse possession. The Trial Court recorded a finding that the plaintiffs failed to prove that they perfected the

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title by adverse possession while answering issue No.4 and dismissed the suit, since the plaintiff failed to establish their case.

Aggrieved by the decree and judgment passed by the Trial Court, the plaintiffs being unsuccessful preferred appeal A.S.No.10 of 2000, but surprisingly, the Appellate Court recorded a finding that the plaintiffs perfected their title by adverse possession by framing issues 1 to 8 and additional issue. In fact, it was never pleaded by the plaintiffs in the plaint. But basis for relief is Ex.A-1 settlement deed before elders of the village.

The procedure to be followed by the Appellate Court is governed by Order 41 of C.P.C and the Appellate Court is under obligation to frame point for consideration and record reasons under Order 41 Rule 31 of C.P.C. Instead of resorting to follow procedure under Order 41, the Appellate Court adopted a normal procedure as in original suit under Order XIV Rule 1 of C.P.C by framing issues and additional issue which is the duty of the Trial Court. It is the duty of Trial Court to frame issues and the Appellate Court has to discharge its duties, sitting over the judgment of the Trial Court as an Appellate Court, but the Trial Court pronounced the judgment based on extraneous material, more particularly, recorded a finding that the plaintiff failed to prove her title by adverse possession. In fact, it was never pleaded by the defendants in the plaint. But, the basis for the relief is Ex.A-1 settlement before the elders of the village. Thus, the

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judgment of the Appellate Court is perverse on the face of record and it is in contravention of Order LXI Rule 31 read with Rule 33 of C.P.C. On this simple ground, the decree and judgment of the Appellate Court is liable to be set-aside as the judgment is not in consonance to Order LXI Rule 31 of C.P.C, while remanding the second appeal to the Appellate Court, directing the Appellate Court to adhere to the mandatory procedure to be followed under Order LXI Rule 31 and decide the matter afresh, restoring the appeal to its original number in the appeals register and afford reasonable opportunity to both the parties and dispose of the appeal in accordance with law. Both the parties are directed to appear before the Appellate Court on 14.10.2016 either in person or through their advocate on record on 14.10.2016 and it is made clear that the Appellate Court need not issue any notice afresh for their appearance.

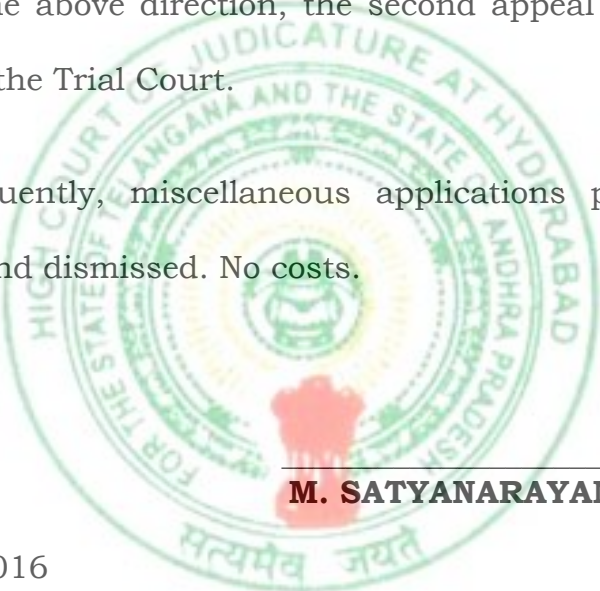
It is brought to my notice during hearing that the Trial Court recorded a finding declaring the title of the plaintiffs granting recovery of possession but in paragraph 12 of the judgment, finding was recorded by the Appellate Court in favour of the respondents herein i.e. plaintiffs, but the operative portion is silent with regard to the grant of relief of declaration and recovery of possession also, but granted perpetual injunction only. Therefore, this is a clear error on the face of record.

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The plaintiffs filed an application under Section 152 of C.P.C for amendment of decree by this Court, since the reliefs granted in favour of the plaintiffs by the Appellate Court, more particularly in paragraph 12 of the judgment are not reflected in the operative portion of the judgment. But when the appeal is remanded, liberty is given to the plaintiff to move appropriate application under Section 152 before the Appellate Court subject to permissibility under law.

With the above direction, the second appeal is allowed and remanded to the Trial Court.

Consequently, miscellaneous applications pending if any shall also stand dismissed. No costs.



M. SATYANARAYANA MURTHY, J

Date:19.08.2016

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