

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.539 OF 2016

ORDER:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure (for short 'C.P.C. '), challenging the decree and judgment dated 02.03.2016 in A.S.No.281 of 2014 passed by the III Additional Chief Judge, City Civil Court, Hyderabad, remanding the matter to the trial Court after receiving additional evidence filed along with petition under Order 41 Rule 27 C.P.C. But recorded a finding that there is nothing wrong in the finding recorded by the trial Court.

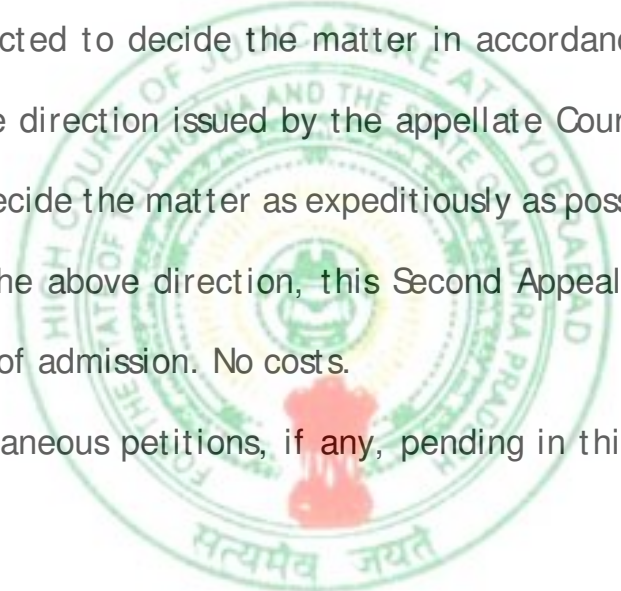
2. The only question before this Court is that the appellate Court while remanding the matter to the trial Court shall not affirm a finding unless the decree passed by the trial Court is set aside remitting the matter to the trial Court is erroneous, while exercising power under Order 41 Rule 23A CPC.

3. It is clear from the record that appellate Court received additional evidence filed along with petition under Order 41 Rule 27 C.P.C. and the appellate Court has to follow the procedure as contemplated under Order 41 Rule 28 C.P.C. which deals with mode of taking additional evidence. According to it, when additional evidence is received, the appellate Court may take such evidence, or direct the Court from whose decree the appeal is preferred or any other Subordinate Court, to take such evidence and to send it when taken to the Appellate Court. But Order 41

Rule 23A C.P.C. permits the Court to remand the matter to any Subordinate Court only where the Court from whose decree an appeal is preferred has disposed of otherwise than on a preliminary point, the decree is reversed in appeal and re-trial is considered necessary. But, here, instead of reversing the decree passed by the trial Court, passed judgment remanding the matter to the trial Court, which is contrary to Order 41 Rule 23A C.P.C. Hence, while affirming the remand of the matter to the trial Court, the finding affirming the decree of the trial Court is set aside and the trial Court is directed to decide the matter in accordance with law by following the direction issued by the appellate Court and the trial Court may decide the matter as expeditiously as possible.

4. With the above direction, this Second Appeal is disposed of at the stage of admission. No costs.

5. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 31.08.2016
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