

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1478 of 2008

Date:15.07.2016

Between:

Mallisetti Ganeswara Sitarama Krishna Rao

... Appellant.

AND

Mallisetti Chinnayya @ Apparao and others.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1478 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 20-01-2005 in IASR No.8781/14-12-2014 filed in I.A.No.43/2004 in I.A.No.1/2004 in A.S.No.50/1996 on the file of Additional Senior Civil Judge (FTC), Kovvur, West Godavari District.

2. Appellant is plaintiff whose suit was dismissed against which, A.S.No.50/1996 was preferred and that appeal was dismissed for default, to restore that, I.A.No.1/2004 was filed and that application was also dismissed for default for which I.A.No.43/2004 was filed for restoration and when that was also dismissed, present IASR was filed for restoration of I.A.No.43/2004. The Court below rejected the application at SR stage mainly on the ground that order dated 13-12-

2004 in I.A.No.43/2004 was decided on merits. But as seen from the order dated 13-12-2004 in I.A.No.43/2004, it was not decided on merits, after receiving counter, the application was dismissed holding that petitioner did not assign any reasons for his absence, except that nothing is recorded in the said order. There is no mention about the reasons assigned by the appellant for his absence so also the objection of the opposite party in the counter. The advocate filed his affidavit in support of IASR No.8781/14-12-2004, assigning some reasons for his absence on 13-12-2004 on which date, the impugned order was passed.

3. This Court ordered notice to respondents and respondents 1 to 4 in spite of service of notice, neither appeared in person nor through any advocate.

4. Advocate for appellant submitted that the suit was filed for declaration in respect of immovable property and as valuable rights are involved, the Court below ought to have given opportunity to the party to decide the matter on merits. It is further submitted that no doubt, there is some fault on the part of the appellant in not properly prosecuting the appeal. It is represented that it happened due to the previous advocate engaged by the appellant, that the same advocate gave affidavit explaining reasons and that the appellant have got fair chances of success in the appeal, therefore, an opportunity may be given to the appellant to prosecute his case.

5. Considering submissions of Advocate for appellant and also considering the fact that the order dated 13-12-2004 is not an order of merits and the Court below erroneously recorded that it is an order on merits and on that ground, rejected the application at SR stage which in my view is not proper and correct. Therefore, the impugned order

dated 20-01-2015 is set aside and the Court below is directed to assign number to IASR No.8781/14-12-2014 and decide that application on merits, as expeditiously as possible, after giving opportunity to both parties.

6. Appeal is allowed accordingly and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of. No costs.

JUSTICE S. RAVI KUMAR

Date:15.07.2016

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