

**HON'BLE SRI JUSTICE S. RAVI KUMAR**

**CIVIL MISCELLANEOUS APPEAL No.655 of 2010**

**JUDGMENT:**

This appeal is preferred questioning order dated 29.04.2010 in A.S.No.211 of 2005 on the file of X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

2. Appellant is defendant in O.S.No.4584 of 1995, which is filed seeking declaration that the orders passed in R.C.No.575 of 1995 dated 11.10.1995 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad, is null and void and obtained in collusion from the Rent Controller and not binding on plaintiff and for perpetual injunction restraining defendant from executing that eviction order. The suit was dismissed by order dated 19.06.2000 and challenging the said judgment and decree dated 19.06.2000 plaintiff preferred A.S.No.211 of 2005. In the appeal, plaintiff filed I.A.Nos.1209 of 2007 and 128 of 2008 under Order XLI Rule 27 C.P.C. to receive documents filed along with those petitions as additional evidence on behalf of plaintiff. Appellate Court on a consideration of the material on record and also documents filed along with those petitions was of the view that the matter has to be remitted back to trial Court to give opportunity, to adduce oral and documentary evidence and also opportunity to plaintiff to cross-examine DW.1 on

that ground by setting aside the judgment dated 19.06.2000, remanded the suit to the trial Court for disposal on day-to-day basis. Aggrieved by the order of the 1<sup>st</sup> appellate Court, defendant preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that appellate Court ought to have considered the documents filed along with I.A.Nos.1209 of 2007 and 128 of 2008 as they are certified copies, and not justified in remanding the case to the trial Court. It is submitted that DW.1 was not cross-examined by plaintiff, but appellate Court while remanding the matter gave an opportunity to plaintiff to cross-examine DW.1 and that appellate Court is not justified in remanding O.S.No.4584 of 1995 for fresh disposal. He further submitted that 1<sup>st</sup> appellate Court made some observations with regard to the documents filed along with application and those observations are prejudicial to appellant herein i.e., defendant.

5. On the other hand, advocate for plaintiff submitted that plaintiff submitted all the documents filed along with those petitions, are certified copies of the proceedings in R.C.No.575 of 1995, which is in issue. He submitted that as the appellate Court has given opportunity to both parties to adduce evidence, no prejudice is caused to defendant and even the observations made in respect of documents are only observations they do not go into

merits of the case.

6. I have perused the material papers including the impugned order dated 29.04.2010. Plaintiff filed certified copies of judgment and decree in O.S.No.1497 of 1998 and other related documents in respect of R.C.No.575 of 1995 and appellate Court felt that those documents are material and necessary to decide the issue involved in the suit and as recording of evidence is required to mark those documents and as DW.1 was not cross-examined on behalf of plaintiff, 1<sup>st</sup> appellate Court felt that it is a fit case to remit back the suit to the trial Court by giving opportunity to both parties to consider those documents and also to adduce any evidence if necessary. The main grievance of appellant is that 1<sup>st</sup> appellate Court made certain observations with regard to relevancy and admissibility of these documents and those observations caused prejudice to appellant and trial Court may carry away with those observations in which case irreparable loss would be caused to appellant. As seen from the record, the fact remains that both parties have to adduce some evidence in respect of those documents and only after giving opportunity to both parties, the appellate Court directed the trial Court to take those documents on record for appreciation, I do not find any wrong in the order of the 1<sup>st</sup> appellate Court. However, since the appellant is apprehending that the observations of the 1<sup>st</sup> appellate

Court in respect of these documents, may weigh the trial Court while deciding the suit, it is made clear that trial Court shall dispose of the suit independently, without being influenced by any of the observations made by the 1<sup>st</sup> appellate Court with regard to documents.

7. Accordingly, appeal is dismissed directing trial Court to dispose of the suit as early as possible without being influenced by any of the observations made by the 1<sup>st</sup> appellate Court in respect of the documents received under I.A.Nos.1209 of 2007 and 128 of 2008. No costs.

8. Miscellaneous petitions pending, if any, shall stand closed. No costs.

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**S. RAVI KUMAR, J**

23<sup>rd</sup> March 2016.

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