

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1009 of 2013

AND

CROSS OBJECTION (S.R.) No.42251 of 2014

COMMON JUDGMENT:

This appeal is preferred questioning judgment dated 03.02.2012 in A.S.No.266 of 2009 on the file of III Additional District Judge (Fast Track Court), Ongole.

2. Appellants are defendant Nos.1 to 4 in O.S.No.54 of 2007 and respondent Nos.1 to 4 in A.S.No.266 of 2009.

The said O.S.No.54 of 2007 is filed by 1st respondent herein for cancellation of divorce decree dated 10.04.1991 in O.P.No.19 of 1991 on the file of Senior Civil Judge, Addanki, Prakasham District. Trial Court on a consideration of oral and documentary evidence of both parties dismissed the suit holding that plaintiff is not entitled for the relief as prayed for. Challenging that plaintiff preferred appeal in A.S.No.266 of 2009 and appellate Court by re-casting issue No.4, remanded the matter to the trial Court for fresh disposal by directing trial Court to permit plaintiff and defendants to adduce additional evidence both oral and documentary on all the issues and to dispose of the suit afresh on merits. Aggrieved by the remand order passed by the III Additional District Judge (Fast Track Court), Ongole, defendant Nos.1 to 4 in the suit and respondent Nos.1 to 4 in the appeal preferred this miscellaneous appeal.

3. Respondent No.1-plaintiff also filed cross-objections contending that appellate Court having recorded favourable findings in favour of plaintiff ought to have allowed the appeal in toto and ought not have remitted back the matter to trial Court.

4. Heard both sides.

5. As seen from the material, dispute is between two women claiming as wives of late Prabhakar. Respondent No.1 herein contended that she married late Prabhakar on 16.05.1977 as per Christian rites, but her late husband fraudulently filed O.P.No.19 of 1991 before Senior Civil Judge, Ongole, invoking the provisions of Hindu Marriage Act and obtained a decree of divorce though the provisions of Hindu Marriage Act are not applicable to the parties and questioning that decree she filed O.S.No.54 of 2007. It is the contention of 1st appellant herein that late Prabhakar after obtaining divorce decree on 10.04.1991 married her on 23.05.1991 and they are Hindus, governed by provisions of Hindu Marriage Act. Respondent No.1 i.e., plaintiff produced marriage certificate in support of her claim that the marriage was as per Indian Christian Marriage Act and that was marked as Ex.A.1 and trial Court framed an issue with regard to this document as follows:

“Whether the marriage certificate of plaintiff is a forged and fabricated document?”

Appellate Court, while considering the contentions and

rival contentions of both parties, was of the view that the issue in respect of Ex.A.1 has to be re-casted in the following manner:

Whether the marriage certificate of plaintiff i.e., Ex.A.1 is true and genuine one?

Appellate Court by recasting that issue remanded the suit for fresh disposal directing trial Court to permit plaintiff and defendants to adduce additional evidence. Both advocates submitted that the evidence on record is sufficient to decide Ex.A.1 marriage certificate and there is no necessity of adducing any further evidence. It is further submitted that the persons available concerned with Ex.A.1 were already examined before the trial Court and it is only to appreciate their evidence and give a finding with regard to Ex.A.1 document and appellate Court totally erred in remitting back the suit, therefore, the said order has to be set aside.

6. On a scrutiny of the impugned judgment dated 03.02.2012 and the judgment of trial Court dated 05.11.2009, I find some force in the submissions of both sides that appellate Court instead of deciding the issue relating to Ex.A.1 document on the basis of evidence available on record unnecessarily re-casted issue and remitted back to trial Court, which in my view is not a proper exercise of power under Order XLI Rule 23 C.P.C., therefore, the order of appellate Court is liable to be set aside.

7. For these reasons, appeal is allowed and the impugned order of remand dated 03.02.2012 is set aside and appellate Court shall restore the appeal to its original number and decide the matter on the basis of material available on record without being influenced by any of the findings recorded by it earlier by giving opportunity to both parties within a period of six months from the date of receipt of this order.

8. With the above direction, both appeal and cross-objections are allowed.

9. Miscellaneous petitions pending, if any, shall stand closed in both the cases. No costs.

S. RAVI KUMAR, J

26th February 2016.

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