

THE HON'BLE SRI JUSTICE A.V. SESA SAI

APPEAL SUIT No.603 of 2015

JUDGMENT:

Challenging the judgment and decree passed by the Court of the XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, this Appeal Suit is filed under Section 96 of the Code of Civil Procedure by the defendant.

2. The respondents herein instituted O.S.No.255 of 2011 for the following reliefs:

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- a) "to declare that the plaintiff No.1 as absolute owner and landlord of schedule of property i.e., Southern Portion of Ground and First Floor of Premises bearing No.4-32-96 total admeasuring 1969 Sq.ft of built up area along with undivided share of land admeasuring 93 Sq.yds out of total area admeasuring 210 Sq. Yds marked in RED in the plan annexed to the plaint;*
- b) to declare that the plaintiff No.2 as absolute owner and landlord of all the Entire Second Floor of Premises bearing No.4-32-96 along with undivided share of land admeasuring 70 Sq.yds out of total area admeasuring 210 Sq.yds marked in BLUE in the plan annexed to the plaint;*
- c) to direct the defendant and all the persons claiming through her to vacate and handover*

vacant and peaceful possession of portion of First Floor of Premises bearing No.4-32-96 situated at Shapoornagar, IDA, Jeedimetla, R.R.District.

d) to direct the defendant to pay future mesne profits from the date of suit till date of vacating and handing over vacant and peaceful possession of portion under occupation at Rs.10,000/- per month and to award costs of the suit.”

3. The learned Additional District and Sessions Judge passed the following decree:

1. *“that the suit be and the same is hereby partly decreed declaring the plaintiff No.1 as the owner of the RED colour portion of the ground and first floor of the **plaint** schedule property as marked in RED colour in the plan.*
2. *and that the second plaintiff is declared as the owner of the second floor of the building which was marked in BLUE colour in the **plaint** plan.*
3. *that the defendant is directed to vacate the portion of the first floor which is in her occupation beyond the scope of the WILL within three months from this date.*
4. *that the claim of the plaintiffs for mesne profits be and the same is hereby dismissed.*
5. *that there shall be no order as to the costs of the suit.”*

4. In A.S.M.P.No.1736 of 2015, this Court on 05.10.2015, suspended the decree and judgment passed by the trial court.

In the said interim order, this Court held as under:

“The explanation under Rule 2 further says that no party shall be deemed to have failed to appear if he represents either in person or by making an application. And the appearance of the counsel shall not be construed to be the appearance of the party. Therefore, the decree and order passed is prima facie deemed to be an ex-parte decree.

In the absence of the respondent the trial Court proceeded to decide the matter on merits instead of resorting to decide the matter on merits instead of resorting to decide the suit in any one of the modes contemplated under Order 9 Rule 13 C.P.C. Though notice was ordered and intimation was given to the respondent through registered post they did not put up appearance. Hence drawing assumption under Section 27 of the General Clauses Act, the notice was deemed to have been served on the respondent.”

5. After service of notice, an affidavit dated 18.08.2016 deposed by the 1st respondent on his behalf and on behalf of 2nd respondent is filed. At paragraph No.4 of the said affidavit, it is averred as follows:

“4. I am advised to submit that since the appellant did not participated in the suit proceeding impugned judgment is ex-parte judgment, since the

above appeal is filed against the impugned judgment and decree, as such the above appeal can be disposed of by remanding the matter back to trial court for fresh disposal with a direction to trial court to dispose of the matter within a period of three months from the date of receipt of the order of this Hon'ble Court."

6. In view of the above and having regard to the nature of controversy, keeping in view of the relationship between the parties and taking into consideration the submissions of the learned counsel for the appellant and respondents, this Court deems it appropriate to dispose of the Appeal by remanding the matter back to the Court below for fresh trial and disposal, in accordance with law.

7. For the aforesaid reasons, A.S.No.603 of 2015 is allowed, setting aside the judgment and decree dated 05.06.2014 in O.S.No.255 of 2011 and O.S.No.255 of 2011 is remanded to the Court below for fresh disposal, in accordance with law, as expeditiously as possible. No order as to the costs.

8. The Miscellaneous Petitions, if any, pending in this Appeal Suit shall stand closed.

A.V. SESA SAI, J

September 15, 2016

SS/Pn

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