

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL Nos.613 & 625 of 2015

COMMON JUDGMENT:

These two appeals are preferred challenging common judgment and decree dated 23.04.2015 in A.S.No.64 of 2009 and A.S.No.60 of 2010 on the file of Principal District Judge, Kadapa, whereunder, common judgment dated 28.02.2009 in O.S.No.80 of 2002 and O.S.No.30 of 2004 respectively on the file of Senior Civil Judge, Kadapa, is confirmed.

2. Appellant herein is D.1 in O.S.No.80 of 2002 and D.3 in O.S.No.30 of 2004. As seen from the material, appellant herein remained ex parte before trial court in O.S.No.80 of 2002 and in O.S.No.30 of 2004 and second defendant in O.S.No.80 of 2002 and first defendant in O.S.No.30 of 2004 only contested the suit and on a consideration of oral and documentary evidence, counter claim made by contesting defendant was dismissed and decreed the suit O.S.No.80 of 2002 declaring that plaintiff therein has a right over ABCDEFJHK of plaint property and granted injunction as prayed for and dismissed the other suit O.S No.30 of 2004, but granted the counter claim made by first defendant therein directing plaintiff therein to close the door on Northern side wall of his rice mill within the period of six months. Plaintiff, who lost O.S.No.30 of 2004 preferred A.S.No.60 of 2010 and appellant herein filed A.S.No.64 of 2009 assailing the decree granted in O.S.No.80 of 2002 after seeking leave of the court to file this appeal. The appellate court on a consideration of entire material dismissed the appeals in A.S.No.64 of 2009 and A.S.No.60 of 2010. Aggrieved by which, these two appeals are preferred.

3. Advocate for appellant submitted that appellant herein

has no opportunity to contest the suit in O.S.No.80 of 2002 and when a request is made to the first appellate court to remand the case to enable appellant herein to contest the matter, the appellate court has not considered the request of appellant herein and therefore the judgment of the first appellate court is perverse and contrary to law. According to appellant, the following are the substantial questions of law that would arise for consideration of this court.

“1. Whether the Lower Appellate Court is right in dismissing the appeal having granted the leave instead of remanding the matter in the facts and circumstances of the case?

2. Whether the Lower Appellate Court is right in confirming the judgment of the trial court on the basis of case set up by DW-1 (defendant No.2 in OS No.30/2004) without giving opportunity to the appellant to adduce evidence by remanding the matter as prayed for?

3. Whether the Lower Appellate Court is right in rejecting the petition to receive additional evidence more particularly in view of the rival claims between the parties and in the facts and circumstances of the case?

4. Whether the lower appellate Court is not right in occupying the contribution that the matters are required to be remanded, in view of Judgment in O.S.No.252/04 in relation to the properties in question to avoid conflicting judgment?

5. Whether the lower appellate court is right in confirming the judgment of the trial Court regarding the counter claim in the absence of any cogent reasons?”

4. According to appellant, first appellate Court having granted leave, erred in not remanding the matter to the trial Court by giving opportunity to appellant. This is one of the grounds

urged. But the objection of appellant is not tenable. Simply because, leave is granted to appellant, he cannot claim favourable order particularly remand as prayed for. The other grounds are completely in respect of factual aspects and appreciation of evidence. Here, appellant has neither filed any written statement nor contested the suit therefore he cannot question the correctness of evidence. The other objection of the appellant is that the appellate court has not considered the application filed by him to receive additional evidence. But this objection is also not tenable because when there is no written statement and defence taken by appellant herein in the original suit, the question of adducing evidence or additional evidence does not arise therefore the grounds urged as substantial questions of law are not tenable.

5. On a scrutiny of the material, I am of the considered view that no law is involved, leave alone, substantial question of law and that the appeals are devoid of merits and liable to be dismissed.

6. Accordingly, these two Second Appeals are dismissed at admission stage. No costs. Miscellaneous petitions, if any pending, in these Appeals shall stand closed.

S. RAVI KUMAR, J

Date: 11-02-2016.

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