

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL Nos.294 and 303 of 2016

COMMON JUDGMENT:

These two second appeals filed by different sets of parties arose out of the common judgment dated 08.02.2016 passed by the learned Special Sessions Judge For Trial of Cases Under SC&ST(Prevention of Atrocities) Act, 1989-cum-VII Additional District and Sessions Judge, Ranga Reddy District, in A.S.Nos.148 and 149 of 2012.

A.S.No.148 of 2012, in turn, arose out of O.S.No.189 of 2005 on the file of the learned Principal Junior Civil Judge-cum-V Metropolitan Magistrate, Cyberabad, at Medchal, Ranga Reddy District, while A.S.No.149 of 2012 arose out of O.S.No.195 of 2005 on the file of the same Court. These two suits, though they were on the file of the same Court, were tried separately and disposed of by separate judgments dated 12.03.2012. Except for the fact that the plaintiff in O.S.No.195 of 2005 figured as the fourth defendant in O.S.No.189 of 2005, there were no other common parties to the two suits. Both the suits were for grant of perpetual injunctions.

There was, however, some commonality in the basic facts which gave rise to these two suits in terms of the identity of the lands involved and the predecessors-in-title of the respective parties. The appellate Court was therefore justified in clubbing both the appeals and disposing them of by way of a common judgment. However, the appellate Court necessarily had to understand and distinguish the individual nature of the litigation in each of the suits and the parties therein. In this context, the appellate Court seems to have misguided itself and proceeded on the incorrect assumption that the defendant in O.S.No.195 of 2005, V. Srinivas, was the same as the first deceased plaintiff in O.S.No.189 of 2005, R. Srinivasan. Apart from the fact that the names were not even the same, the first plaintiff in O.S.No.189 of 2005 died, while V.Srinivas, the defendant in O.S.No.195 of 2005, is very much alive. Proceeding on the misconception that these two

persons were one and the same, the appellate Court dealt with the two appeals on its file and rendered the common judgment dated 08.02.2016.

As this factual misconception goes to the root of the matter and underlies the various findings and discussion of the appellate Court in the judgment under appeal, this Court is of the opinion that this judgment is liable to be set aside on this short ground. This Court does not intend to venture into the merits of the matter as the first appellate Court has to correctly appreciate the facts arising in these two appeals after duly recognizing the nature of the litigation and identifying the parties properly.

The second appeals are therefore allowed setting aside the common judgment under appeal dated 08.02.2016 passed in A.S.Nos.148 and 149 of 2012 on the file of the learned Special Sessions Judge For Trial of Cases Under SC&ST(Prevention of Atrocities) Act, 1989-cum-VII Additional District and Sessions Judge, Ranga Reddy District. Both the appeals are remitted to the first appellate Court for consideration afresh on merits and in accordance with law after proper appreciation of the facts and identification of the parties. This exercise shall be completed expeditiously and in any event, not later than six months from the date of receipt of a copy of this order, as the present remand is necessitated by the failure on the part of the appellate Court to do the needful in the first instance. The interim orders which were in subsistence pending the appeals shall stand restored and continue to be in operation till the disposal of the appeals afresh pursuant to this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

5th August, 2016
PGS