

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

C.M.A. No. 604 of 2015

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

1) This Civil Miscellaneous Appeal is preferred against the order dated 02.02.2015 made in I.A.No. 2721 of 2014 in O.S.No. 930 of 2014 on the file of the Special Sessions Judge for SC/ ST (POA) Act, 1989-cum-VII Additional District & Sessions Judge, at L.B.Nagar, Ranga Reddy District, whereby all the parties to the suit are directed to maintain *Status Quo* with regard to their possession till disposal of the suit.

2) The learned counsel for the appellant – 3rd defendant submits that in the impugned order, the trial Court has observed that defendant Nos.1 and 2 in O.S.No. 930 of 2014 filed written statement in O.S.No. 1048 of 2007 contending that K.Nagi Reddy, who is the husband of the 1st defendant and the father of the 2nd defendant in O.S.No.930 of 2014, executed a Will dated 19.02.2000, whereas in the written statement filed in O.S.No. 1048 of 2007, it is mentioned that K.Nagi Reddy died intestate leaving behind the plaintiffs and the defendants in O.S.No. 930 of 2014 as legal heirs. The learned counsel further submits that in the impugned order, no documents filed by the parties are marked as exhibits. Those documents are also not considered

by the trial Court. To strengthen her arguments, she has relied upon a judgment rendered by a learned Single Judge of this Court reported in *Piska Jayalakshmi v. Mohd. Abdul Basheer and Anr.*¹ wherein it is held as under:

“Rule 60 of Civil Rules of Practice reads thus:

“60. Proof of facts by affidavit -- Any fact required to be proved upon an interlocutory proceedings shall unless otherwise provided by these rules or ordered by the Court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.”

In view of the same, without going into merits of the case, I deem it appropriate to set aside the impugned order, dated 20.04.2016, and remit the matter to the trial Court for deciding the issue afresh by marking the documents filed by both parties.

Accordingly, the revision petition is allowed setting aside the impugned order, dated 20.04.2016, and the matter is remitted to the trial Court for deciding the issue afresh by marking the documents filed by both parties.”

3) Accordingly, the learned counsel for the appellant prays to set aside the impugned order and remit the matter back to the trial Court with a direction to decide the issue afresh.

4) On perusal of the impugned order, we note that the petitioners-plaintiffs and the respondents-defendants in I.A.No. 2721 of 2014 in O.S.No. 930 of 2014 have suppressed the material facts which lead to not pressing the O.S.No. 1048

¹ 2017(2) ALD 16

of 2007. Hence, in order to protect the interests of both the parties, the trial Court directed both the parties to maintain *Status Quo* with regard to their possession as on the date of the order till disposal of the suit.

5) After hearing the learned counsel for both the parties, it is established that there are claims and counter-claims in O.S.No. 930 of 2014, and unless and until this suit is finally decided, the issue whether the plaintiffs or the defendants are right in their submissions, cannot be decided by this Court at this stage.

6) In the interest of justice, we hereby direct the trial Court to decide O.S.No. 930 of 2014 itself, within a period of six months from the date of receipt of a copy of this order. Till then, both the parties are directed to maintain *Status Quo* obtained as on 02.02.2015 with regard to their possession.

7) It is made clear that while disposing of the suit, the trial Court shall consider all the documents filed by the parties and shall not, in any way, be influenced by the observations made in the impugned order.

8) In view of the above observations, the Civil Miscellaneous Appeal is disposed of. No order as to costs.

9) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

24.03.2017

SURESH KUMAR KAIT, J

bcj

U.DURGA PRASAD RAO, J

