

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.651 OF 2005

JUDGMENT:

Heard learned counsel for the appellants. None appears for the respondents in spite of service of notice.

The respondents herein filed O.S.No.149 of 1995 on the file of the Junior Civil Judge, Aluru seeking declaration of title and for permanent injunction in respect of property of an extent of Acs.3.06 cents out of Acs.6.12 cents in Survey No.363-A of Pedda Gonehal Village, Holagunda Mandal, Kurnool District. The said suit was dismissed with costs by Judgment and decree dated 23.07.1998. Against the same, the plaintiffs preferred A.S.No.29 of 1998 before the learned Senior Civil Judge, Adoni, and the learned Senior Civil Judge by order dated 20.06.2005 allowed the Appeal Suit and remanded the case to the lower Court for fresh disposal. Aggrieved over the same, the present appeal is filed.

The Appeal Suit was allowed mainly on the ground that I.A., filed by the plaintiffs was allowed for amendment of the plaint to receive the title deeds and partition deed and no opportunity was given to the Appellant before the trial Court, and the matter was remanded, with the following observations.

“On perusal of the record, it appears that the appellant was not given sufficient opportunity to adduce his evidence and to mark the documents and at present his petitions were allowed in the appeal and he is given opportunity for amendment and to adduce evidence. Similarly, respondents were also given opportunity to adduce evidence. As opportunity is given for the appellant to adduce further evidence for amendment of plaint, it is not necessary to go into merits of the case and other details. It is not necessary to discuss whether A.S.No.22 of 1974 operates as *res judicata* or not. It is not necessary to discuss the evidentiary value of Ex.A.8 and other revenue records. The learned respondents counsel argued that the appellants suppressed the filing of injunction suit by the respondents and about A.S.No.22 of 1974. Because both parties are permitted to adduce additional evidence now I am not going into merits of the case. The appellant wanted to adduce additional evidence to show that he perfected the title by adverse possession also I.A.No.1107 is dismissed, so opportunity is to be given. From the above discussion, I hold that it is a fit case to remand the matter to lower Court where both parties can adduce evidence and the appellant can amend the pleadings. The lower Court is

directed to dispose of the suit afresh after taking evidence, after amendment and to collect necessary court fee for the amendment. This point is answered accordingly.”

In view of the same, this Court does not find any ground to interfere with the said order. However, since it is a old suit, the learned Junior Civil Judge, Aluru, shall take up the matter after remand and dispose of the same as expeditiously as possible.

The Civil Miscellaneous Appeal is accordingly dismissed. Consequently, miscellaneous petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

04.08.2017
pln

