

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

C.C.C.A.NO.181 OF 2015

JUDGMENT: (per SK,J)

This appeal under Section 96 CPC arises out of the judgment and decree dated 28.07.2015 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, in O.S.No.26 of 2006. The said suit was filed by the appellant herein with the following prayer:

- (a) 'A preliminary decree for partition and separate possession of the property left by the deceased late Smt.Usha Pani, as shown in the plaint schedule by metes and bounds and the plaintiff be put to separate possession of his 1/3rd share of the suit property.
- (b) A commission be appointed to partition of the suit schedule property and to ascertain the mesne profits and the plaintiff be paid 1/3rd share from the suit schedule property from the date of the suit till the date of its realisation.
- (c) A final decree be passed in accordance with the partition and allotment of shares as made by the commissioner and accepted by the Hon'ble Court.
- (d) Costs of the suit be awarded to the plaintiff.
- (e) Any other or further relief or reliefs as may deem fit and proper by the Hon'ble Court in the circumstances of the case.'

It appears from the appendix to the judgment under appeal that P.Ws.1 and 2 were examined by the plaintiff, while D.Ws.1 to 3 were examined by the defendants. Exs.A1 to A10 were marked for the plaintiff. Ex.B1 was marked through D.W.1. Exs.C1 and C2 were marked through D.W.2 and Exs.B2 to B4 were marked through D.W.3.

Sri M.W.R.Jayakar, learned counsel for the appellant, would state that the judgment is completely bereft of application of mind.

We find merit in this submission as the trial Court has not even set out the issues framed for consideration.

Though Sri Ashok Kumar Agarwal, learned counsel for the first respondent/first defendant, would state that issues were, in fact, framed by the trial Court on 12.02.2007, we find no mention of the same in the body of the judgment. That apart, though the appendix indicates

examination of only three witnesses for the defendants, the certified copies of the suit record furnished by Sri M.W.R.Jayakar, learned counsel, would indicate that, on the one hand, N.Dilip Kumar was examined as D.W.3 and, on the other, Dr.P.Sudha Rani was also sworn in for examination as D.W.3. She filed her affidavit in lieu of chief-examination which was admitted in evidence by order dated 29.01.2013 passed by the trial Court and on the said date, the matter was deferred for her cross-examination. This witness does not even find mention in the appendix to the judgment. That apart, the very fact that the trial Court was not even aware of the number of witnesses examined clearly demonstrates the level of application of mind.

Given these circumstances, as the trial Court did not even know as to what were the issues before it, which were under consideration, we are left with no option but to set aside the judgment and decree under appeal and remand the matter to the trial Court for consideration afresh on merits in accordance with law. The trial Court is at liberty to examine the issues framed on 12.02.2007 and frame additional issues, if required. Additional evidence may also be permitted depending upon this decision. As this is the second round of litigation, the trial Court shall endeavour to dispose of the suit expeditiously. It is left open to the parties to seek appropriate interim relief afresh, if required, from the trial Court.

The appeal is accordingly allowed. Pending miscellaneous petitions filed in this appeal shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

J.UMA DEVI ,J

Date:12.12.2017

GJ