

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL

Second Appeal No. 311 of 2015

JUDGMENT:

This Second Appeal is directed against the judgment and decree dated 23.02.2015 dismissing the first appeal in A.S.No. 183 of 2011 on the file of the III Additional District Judge, East Godavari at Kakinada.

2. Having heard the submissions of the learned counsel appearing for the appellants, who are Defendants 2 and 3 in the suit, and having perused the material on record, since it is a fit case where the matter needs to be remanded to the first appellate Court for fresh disposal, I do not intend to go into the merits of the controversy involved in the appeal.

3. The 1st Respondent herein filed O.S.No.700 of 2009 on the file of the Principal Senior Civil Judge, Kakinada, for recovery of money on the basis of a promissory note. By the judgment and decree dated 15.09.2011, the learned Principal Senior Civil Judge decreed the suit. Aggrieved thereby, the defendants 2 and 3 preferred A.S.No.183 of 2011 before the first appellate Court.

4. From a perusal of the record it is noticed that during the pendency of the first appeal, the appellants/defendants also filed I.A.No.1867 of 2014 under Order XLI, Rule 27 of Civil Procedure Code to receive as many as 18 documents by way of additional evidence. The said application was taken on file and underwent several adjournments along with the main appeal. As per the docket proceedings of the I.A., a copy of which is produced, it is noticed

that on 17.11.2014 arguments of the Respondents were heard, but the I.A., to receive additional evidence, was directed to be called along with the main appeal, which was reserved for judgment.

5. However, on 23.02.2015, the learned Appellate Court has disposed of the main appeal, but has not passed any orders in I.A.No.1867 of 2014, which was pending and directed to be posted along with the main appeal. Not only that, the appellate Court at Para-16 of its judgment observed that the appellants neither filed their gift deeds nor the revenue records to show that since 1994 the appellants are enjoying their respective properties separately and their names are mutated in the concerned revenue records. *Prima facie*, the documents that were sought to be filed by the appellants/defendants 2 and 3 by way of additional evidence consists of certified copies of gift deeds, sale deeds, encumbrance certificates, pass books, title deeds, land receipts and certificates issued by the revenue officials. Whether those documents are relevant for the purpose of proving the claim of the appellants or not cannot be considered at that stage. However, having reserved the orders in the I.A., filed for receiving additional evidence, which is to be disposed of along with the main appeal, the learned appellate Judge failed to dispose of the same along with the appeal, and instead dismissed the appeal on the ground that no documents whatsoever have been produced by the appellants/ defendants in support of their contention.

6. In that view of the matter, it is a fit case to conclude that the appellate Court has erred in disposing of the appeal, without

considering and disposing of the pending application to receive the documents as additional evidence, and hence the judgment and decree of the appellate Court are liable to be set aside and the matter is liable to be remanded for fresh disposal.

7. In the result, the second appeal is allowed. Consequently, the judgment and decree in A.S.No.183 of 2011 on the file of the III Additional District Judge, East Godavari at Kakinada, are set aside. The matter is remanded to the learned District Judge to dispose of the appeal afresh along with the I.A.No.1867 of 2014 expeditiously, preferably within a period of three months from the date of receipt of a copy of this judgment. No order as to costs. Consequently, the pending miscellaneous petitions, if any, shall stand closed.

Date: 08.06.2017
Kv

M.S.K.JAISWAL, J



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