

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.254 of 2016

JUDGMENT:

This appeal is filed by the unsuccessful plaintiff assailing the judgment and decree dated 10.12.2015 in A.S.No.72 of 2014 on the file of the Court of III Additional District Judge, Guntur, whereby whereunder the judgment and decree dated 14.08.2013 in O.S.No.788 of 2010 on the file of the IV Additional Senior Civil Judge Court, Guntur, decreeing the suit for specific performance was reversed.

2. At the time of arguments, both counsel with one voice submitted that the first appellate Court for the first time framed the point for consideration with regard to limitation. Both counsel further submitted that no opportunity was given to the appellant-plaintiff to address on the point of limitation. They further submitted that the respondent-defendant has not adduced any evidence on her behalf before the trial Court. Both counsel submitted that this is a fit case to remand the matter to trial Court for fresh disposal, after affording a reasonable opportunity to both parties to adduce evidence.

3. The respondent-defendant filed an affidavit stating that the construction is in progress and she may be permitted to make further constructions and that she will not claim any equities if ultimately the suit is decreed in favour of the appellant-plaintiff.

4. In view of the submissions made by both the counsel, this Court is not inclined to go into the merits of the main case.

5. In the result, the second appeal is allowed and the decree and judgment dated 10.12.2015 in A.S.No.72 of 2014 on the file of the Court of III Additional District Judge, Guntur, and decree and judgment dated 14.08.2013 in O.S.No.788 of 2010 on the file of the IV Additional Senior Civil Judge Court, Guntur, are hereby set aside. The matter is remanded to the trial Court for fresh disposal. The trial Court is hereby directed to give an opportunity to both the parties to adduce evidence and dispose of the matter in accordance with law, as expeditiously as possible. No order as to costs. As a sequel, miscellaneous petitions pending, if any in this appeal, shall stand closed.

16th November, 2017
Rns

T.SUNIL CHOWDARY, J



