

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.61 of 2015

ORDER:

This appeal is filed under Order 43 Rule 1(u) CPC assailing the judgment dated 29.10.2014 passed in A.S.No.18 of 2012 on the file of IV Additional District Court, Kakinada.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. A perusal of the record reveals that the appellant filed O.S.No.44 of 2009 on the file of III Additional Senior Civil Judge Court, Kakinada, against the respondents claiming damages basing on the impugned publication dated 04.11.2008 published in D.4 newspaper. It is the case of the appellant that at the instance of D.1 to D.3, news item was published in D.4 newspaper, which is the root cause for filing of the suit. The trial Court after full fledged trial decreed the suit. Feeling aggrieved by the judgment and decree dated 22.11.2011 passed in O.S.No.44 of 2009 on the file of the III Additional Senior Civil Judge Court, Kakinada, the respondent preferred A.S.No.18 of 2012 on the file of IV Additional District Court, Kakinada. The first appellate Court after considering the material available on record, arrived at a conclusion that the trial Court has not properly framed the issues and remanded the matter to the trial Court.

4. The order passed by the first appellate Court reads as follows:

“In the result, the appeal is allowed by setting aside the decree and judgment dated 22.11.2011 passed by the trial Court in O.S.No.44/2009 and the appeal is remanded to trial Court for fresh disposal by framing the issues by considering the material aspect to be dealt with in the suit for damages. The trial Court is directed to dispose of the suit as expeditiously as possible, as the matter is of the year 2009.”

5. A perusal of the above para clearly reveals that the trial Court has not framed proper issues. A perusal of the record reveals that the trial Court framed the following issues for trial:

1. Whether the impugned publication dated 04.11.2008 issued by D1 to D3 in D.4 news paper constitute defamation and whether the plaintiff is entitled for damages as prayed for?
2. To what relief?

6. As rightly pointed out by the learned counsel for the respondents, the trial Court has not framed the issues properly in order to put an end to the lis involved in the suit. Non-framing of appropriate issues is a valid ground for remanding the matter. The first appellate Court thoroughly analysed the oral and documentary evidence available on record with reference to the issues framed and has arrived at a conclusion that the trial Court has not framed the issues properly.

7. I have gone through the judgment of the trial Court as well as the first appellate Court. On perusing the record, this Court is of a considered view that the trial Court has not framed appropriate issues in order to adjudicate the matter effectively. In the absence of framing of proper issues, it may not be possible for the first appellate Court to adjudicate the matter in accordance with law.

The first appellate Court has assigned reasons much less cogent and valid reasons while remanding the matter. While passing the order, the first appellate Court has considered the scope of Order 41 Rule 23(A) CPC. I am fully endorsing with the findings recorded by the first appellate Court. Viewed from any angle, this Court is of the considered view that there are no grounds much less valid grounds to interfere with the judgment and decree dated 29.10.2014 passed in A.S.No.18 of 2012. There are no grounds much less valid grounds to allow the appeal and the same is liable to be dismissed.

8. In the result, the Civil Miscellaneous Appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

28.11.2018
Rns

T.SUNIL CHOWDARY, J



