

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

SECOND APPEAL No.133 of 2013

JUDGMENT:

This second appeal is filed questioning the judgment and decree, dated 27.11.2012, passed in A.S.No.78 of 2009, by the III Additional District Judge (FTC), Bhimavaram.

The matter was called for hearing today. Both the learned counsels, Sri M.Chalapathi Rao, learned counsel for the appellant, and Sri B.V.S.S.Balakrishna Ranjit, learned counsel for the respondents, are present.

Sri M.Chalapathi Rao, learned counsel for the appellant, submits that I.A.No.206 of 2012 was filed in the first appellate court under Order 41 Rule 27 CPC, but the same was not disposed of along with the appeal. The learned counsel points out that the certified copy of the docket and typed copy are filed, according to which, the arguments were heard on 25.09.2012 and I.A was reserved for orders along with the appeal. The learned counsel points out that a reading of the impugned judgment and decree do not show that I.A.No.206 of 2012 was also disposed of.

The learned counsel for the respondents is also present.

The learned counsel for the appellant produces two judgments in *Durga Matha House Building Constructions Co-op.Housing Society Limited v. Sada Yellaiah*¹ and *Malayalam Plantations Ltd. v. State of Kerala*². The Hon'ble Supreme Court of India in the above second Judgment remanded the matter to the High Court to decide the application filed under Order 41 Rule 27 CPC for reception of additional

¹ 2013 (5) ALT 442 (D.B)

² 2011 (3) SCJ 88

evidence. The Hon'ble Supreme Court clearly held that it is for the High Court to consider and take a decision on the application filed under Order 41 Rule 27 CPC and then decide the appeal with reference to the said conclusion. To the same effect, the Division Bench of this court rendered the decision.

In view of clear and categorical pronouncement of law, this court is of the opinion that this case has to be remanded to the court below. Therefore, the Second Appeal is allowed. The case is remanded to the lower court to decide the appeal afresh, within a period of two months from the date of receipt of a copy of this order. The application (I.A.No.206/2012) has to be decided along with the appeal. The order that is granted by this court on 16.04.2014 in SAMP No.3095 of 2013 shall continue till the appeal is disposed of on merits by the lower court. In the circumstances, no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 14.12.2018
Dsr

Note:

Furnish copy in one week
B/o
Dsr

D.V.S.S.SOMAYAJULU,J