

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.1276 of 2005 and C.M.A.No.462 of 2006

COMMON JUDGMENT:

The Plaintiffs as well as the defendants have filed these two Civil Miscellaneous Appeals under Order 43 Rule 1 (U) CPC assailing the orders dated 19.07.2005 passed in A.S.No.23 of 1999 on the file of the Court of II Additional District Judge, (Fast Track Court), Srikakulam.

2. The point involved in both the appeals is one and the same. Hence, this Court is inclined to pass common order in both the appeals.

3. Heard the learned counsel appearing for both parties.

4. Learned counsel appearing on behalf of both parties in one voice submitted that the appellate Court without considering the scope of Order 41 Rule 31 CPC, remanded the matter to the trial Court. Both counsel further submitted that it is a fit case to set aside the orders dated 19.07.2005 and direct the first appellate Court to dispose of the appeal on merits.

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

6. Having regard to the facts and circumstances of the case, these two appeals are allowed, setting aside the orders

dated 19.07.2005 in A.S.No.23 of 1999 on the file of the Court of II Additional District Judge, (Fast Track Court), Srikakulam. The appellate Court is hereby directed to dispose of the appeal on merits. I.A.No.127 of 2005 filed by the plaintiffs for appointment of advocate commissioner in the appeal also stands revived. Both counsel submitted that one Tyaga Raju, the second plaintiff in the main suit, died during pendency of the appeal. In view of the same, the appellate Court is hereby directed to consider the L.R. applications filed by both parties. The appellate Court is hereby directed to dispose of the appeal within a period of six months from the date of receipt of copy of this order.

7. As a sequel, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

17th July 2018,
Rns

T.SUNIL CHOWDARY, J