

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.6177 OF 2018 and 6060 OF 2018

COMMON ORDER:

The civil revision petition No.6177 of 2018 is filed under Article 227 of Constitution of India challenging the order dated 24.09.2018 passed in I.A.No.161 of 2018 in A.S.No.02 of 2013 by the Senior Civil Judge, Narayanpet, whereby, the petition filed under Order XLI Rule 27 of Code of Civil Procedure (for short "C.P.C."), was dismissed.

The civil revision petition No.6060 of 2018 is filed under Article 227 of Constitution of India challenging the order dated 24.09.2018 passed in I.A.No.245 of 2018 in A.S.No.05 of 2012 by the Senior Civil Judge, Narayanpet, whereby, the petition filed under Order XLI Rule 27 of Code of Civil Procedure (for short "C.P.C."), was dismissed.

The allegations in both the revisions and the impugned orders passed by the trial Court are almost identical, hence it is expedient to decide both the petitions by common order.

For convenience sake, I would like to advert to the facts as narrated in C.R.P.No.6177 of 2018.

C.R.P.No.6177 of 2018:

The petitioners are the appellants and filed an application Under Order XLI Rule 27 of C.P.C. to receive the documents i.e. certified copy of pahani for the year 2001-02, certified copy of pahani for the year 2003-04, certified copy of pahani for the year 2007-08, certified copy of pahani for the year 2008-09, certified copies of pahani for the fasli years 1420, 1421, 1422 and 1423 and certified copy of ROR and certified copy of award proceedings No.F/1580/1982 of the land acquisition officer and Revenue

Divisional Officer, Narayanpet, dated 24.07.1984 in Court as additional evidence alleging that the father of the petitioner was looking after the suit proceedings and after the death of their father, the petitioners are prosecuting the proceedings and found that the documents are necessary and they could not produce the same before the trial Court.

The respondents filed counter contending that the documents filed along with the petition were not referred in the plaint and that the petitioners without showing sufficient reasons for non filing of the documents before the trial Court filed the present petition and the said documents will change the nature of the case and the petitioners have not complied with the conditions prescribed under Order XLI Rule 27 of C.P.C. for filing the present petition.

Upon hearing the argument of both the counsel, the trial Court dismissed the petition independently, without hearing the appeal.

The present revision is filed only on the ground that dismissal of the application independently without considering the appeal is an irregularity and this Court can exercise power under Article 227 of the Constitution of India to set aside the same.

None appeared for the respondents despite service of notice and proof of service is filed.

The petitioners are the plaintiffs/appellants before the appellate Court and filed the petition under Order XLI Rule 27 of C.P.C. to receive additional documentary evidence. According to the procedure, the said petition has to be considered along with the main appeal. But instead of taking up the appeal along with the petition, the appellate Court disposed of the application contrary to the procedure being followed by the Courts.

In “***Bijay Kr.Banerjee v. Smt.Malati Banerjee***¹” it is held that petition under Order XLI Rule 27 of C.P.C. can be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing in the issues involved. Moreover, in case the Court is intended to receive additional evidence, the Court is bound to follow the procedure prescribed under Order XLI Rule 28 of C.P.C., but such application cannot be considered independently.

Therefore, disposing of the application filed under Order XLI Rule 27 of C.P.C. independently without hearing the appeal is an irregularity, hence the order of the Court below is liable to be set aside.

In the result, the civil revision petition No.6177 of 2018 is allowed setting aside the order dated 24.09.2018 passed in I.A.No.161 of 2018 in A.S.No.02 of 2013 by the Senior Civil Judge, Narayanpet. No costs.

C.R.P.No.6060 of 2018:

In view of the detailed order passed in C.R.P.No.6177 of 2018, the civil revision petition No.6060 of 2018 is allowed setting aside the order dated 24.09.2018 passed in I.A.No.245 of 2018 in A.S.No.05 of 2012 by the Senior Civil Judge, Narayanpet. No costs.

The miscellaneous petitions pending in both the petitions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.11.2018
Ksp

¹ AIR 2007 Ori 155