

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5807 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 29.08.2017 passed in A.S.No.90 of 2009 on the file of the Court of XIII Additional District and Sessions Judge, Ranga Reddy District, at L.B.Nagar.

2. Heard the learned counsel appearing for both the parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.3947 of 2006 on the file of the Court of III Additional Junior Civil Judge, Ranga Reddy District, seeking perpetual injunction in respect of the suit schedule property against the petitioner and second respondent. After full fledged trial, the trial Court dismissed the suit. Feeling aggrieved by the judgment and decree dated 19.03.2009 in O.S.No.3947 of 2006, the unsuccessful plaintiff preferred A.S.No.90 of 2009 on the file of the Court of XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. The first appellate Court allowed the appeal. Feeling aggrieved by the judgment and decree in A.S.No.90 of 2009, the petitioner herein filed second appeal No.851 of 2015 on the file of this Court. While allowing the Second Appeal, this Court made the following observations at Paras 14 and 15 of the judgment:

“Para No.14: However, by exercising the power under Rule 23-A of Order XLI of the Code, the matter has to be remanded, directing the first appellate Court to record evidence and mark the documents – Exs.A8 and A9, which were received as additional evidence, by resorting to the procedure prescribed under Rule 28 of Order XLI of the Code, setting aside the Decree and Judgment passed by the appellate Court on the sole ground.

Para No.15: In the result, the appeal is allowed, setting aside the decree and judgment dated 27.07.2015 passed by the XIII Additional District Judge, Rangareddy District, and remanded the matter to the first appellate Court restoring the appeal to its original number in appeal register with a direction to follow the procedure prescribed under Rule 28 of Order XLI of the Code and dispose off the appeal as expeditiously as possible, but not later than 6 months from the date of receipt of a copy of this Judgment. Both the parties are directed to appear before the appellate Court on 09.09.2016.”

4. The first appellate Court without following the direction given by this Court in Para 14 of the judgment of S.A.No.851 of 2015, simply passed orders and remanded the matter to the trial Court. The order passed by the first appellate Court is contrary to the directions of this Court in S.A.No.851 of 2015. If the order of the first appellate Court is allowed to stand, certainly it would amount to miscarriage of justice.

5. Having regard to the facts and circumstances of the case, this Court is of a considered view that it is a fit case to

set aside the order dated 28.09.2017 passed in A.S.No.90 of 2009.

6. In the result, the Civil Revision Petition is allowed setting aside the order dated 28.09.2017 passed in A.S.No.90 of 2009 on the file of the Court of XIII Additional District and Sessions Judge, Ranga Reddy District, at L.B.Nagar. The learned XIII Additional District and Sessions Judge, Ranga Reddy District, is hereby directed to dispose of the appeal by following the guidelines issued by this Court in Para 14 of the judgment in S.A.No.851 of 2015. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:24.09.2018
Rns

T.SUNIL CHOWDARY, J

