

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1377 of 2017

JUDGMENT:

This appeal is filed under Order XLIII Rule 1 of C.P.C. assailing the judgment and decree dated 27.06.2017 passed in Appeal Suit No.183 of 2013 on the file of the Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the appellants filed O.S.No.2808 of 2010 on the file of the Court of the II Senior Civil Judge, City Civil Court, Hyderabad, for eviction of the respondents from the suit schedule property and mesne profits. After full-fledged trial, the trial Court decreed the suit on 20.03.2013. Feeling aggrieved by the judgment and decree in O.S.No.2808 of 2010, the respondents preferred A.S.No.183 of 2013 on the file of the Chief Judge, City Civil Court, Hyderabad. During pendency of the appeal, the respondents filed I.A.No.1750 of 2014 to receive the additional grounds. The respondents also filed I.A.No.2661 of 2014 to recall PWs.1 to 3 for the purpose of further cross-examination. The appellate Court remanded the matter to the trial Court for the purpose of cross-examination of PWs.1 to 3 and pass appropriate orders.

4. Learned counsel for the appellants strenuously submitted that the order passed by the appellate Court is not sustainable under law. He further submitted that viewed from any angle, it is not a fit case to remand the matter to the trial Court for fresh disposal.

5. Learned counsel for the respondents submitted that the appellate Court, after considering the various aspects, remanded the matter in the interest of justice.

6. The appellate Court has not given specific finding that the points urged by the respondent falls within the ambit of Order XLI Rule 23 of CPC. Without giving such a finding, the appellate Court is not justified in remanding the matter to the trial Court. This Court is of the considered view that the appellate Court without considering the scope of Order XLI Rule 23 C.P.C., simply remanded the matter to the trial Court, which is not permissible under law.

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

8. In the result, the Civil Miscellaneous Appeal is allowed setting aside the judgment and decree dated 27.06.2017 passed in Appeal Suit No.183 of 2013 on the file of the Chief Judge, City Civil Court, Hyderabad and remanding the matter. The appellate Court is hereby directed to dispose of the appeal taking into consideration the interlocutory applications pending before it in accordance with law within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.08.2018
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