
(1997) 03 AP CK 0086

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1665 of 1996

A.N. Saraswathi

APPELLANT

Vs

Gollapalle Munikrishna Reddy

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980 — Rule 115
Civil Procedure Code, 1908 (CPC) — Section 141

Citation : (1997) 2 ALT 823 : (1997) 2 APLJ 248

Hon'ble Judges : Ramesh Madhav Bapat, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; O. Manohar Reddy, for the Respondent

Judgement

Ramesh Madhav Bapat, J.—The appellant herein was the original plaintiff who had instituted O.S. 273 of 1995 in the Court of the Principal Subordinate Judge, Tirupathi. The suit was filed by the plaintiff against the respondent-defendant herein for permanent injunction. The plaintiff had also filed LA. 1327 of 1995 in O.S. No. 273 of 1995 seeking interim relief. Initially the interim injunction was granted but subsequently on appearance of the defendant and on filing of the counter, it was vacated. Aggrieved by the aforesaid order of the learned Subordinate Judge, the appellant-plaintiff filed the present appeal.

2. Learned Counsel for the appellant, Mr.F.S.Narayana, submitted at the Bar that the appellant-plaintiff had filed certain documents in order to establish his claim for interim injunction. Similarly the respondent-defendant had also filed certain documents to rebut the claim made by the plaintiff. These documents were not marked by the learned Judge. Some of the documents filed by the respondent-defendant were inadmissible. In spite of this position, those documents were taken into consideration without marking the same and the impugned order came to be passed.

3. Learned Counsel for the appellant herein invited my attention to the Civil

Rules of Practice, especially Rule 115 of Civil Rules of Practice, which gives the procedure to be adopted in marking the documents. Learned Counsel further submitted that this procedure is also applicable for interlocutory applications. Learned Counsel invited my attention to Section 141 of the C.F.C, which specifically lays down as follows:-

"The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction".

4. Therefore, it was submitted by the learned Counsel for the appellant that even at the interlocutory stage the documents produced by both the parties can be taken into consideration and they can be marked with consent of the parties and taking these documents into consideration the learned Judge has to proceed to write the order, but, in the present case no document as such was marked and some documents which are totally inadmissible in evidence were taken into consideration and thus the impugned order was passed.

5. Taking into consideration all the facts and circumstances of the case, this Court holds that the procedure adopted in deciding LA. 1327 of 1995 by the learned Subordinate Judge, Tirupathi is erroneous. Therefore, the impugned order rejecting the interim application for nil interim injunction is hereby set aside. The matter stands remanded to the Sub-Court, Tirupathi, with a direction to mark the documents with consent of the parties, and on hearing both the parties the learned Judge may proceed to pass the order according to law. It is further directed that no party shall enter the mango garden for a period of one month. The learned Subordinate Judge is further directed to dispose of the LA., afresh according to law within a month. If one of the parties does not co-operate in the matter, the learned Judge may proceed to hear the other side and pass orders according to law.

6. With this direction, the C.M.A. stands disposed of. No costs.