
(2000) 06 AP CK 0075
In the Andhra Pradesh High Court
Case No : CRP No. 1873 of 2000

Bhupathi Nageswara Rao and others	Vs	APPELLANT
Addepally Hanumantha Rao		RESPONDENT

Date of Decision : 13-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2000) 5 ALD 624 : (2000) 6 ALT 542

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mrs. G. Lakshmi, for the Appellant; Mr. Addepalli Suryanarayana for Mr. P. Gopal Das, for the Respondent

Judgement

1. The defendants in the suit aggrieved by the docket order of the Principal Junior Civil Judge, Ongole, dated 21-4-2000, in dismissing an unnumbered IA filed by the petitioner, for reopening the suit and dispose of the same on merits, the present revision petition is filed.

2. The respondent herein filed OS No.21 of 1994 on the file of the Principal Junior Civil Judge, Ongole for a permanent injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the suit scheduled land and the Court below though initially granted temporary injunction in IA No.229 of 1994, vacated the same after the petitioners entered appearance. Though the respondents carried the matter to the High Court, he could not get any favourable order. Subsequently, the suit came up for trial in the year 2000 and after completion of the evidence, the Counsel for the petitioners seemed to have reported that he has no instructions and on that the Court below seemed to have posted the suit for judgment on 18-4-2000. The petitioners having come to know of the development immediately engaged a new advocate and while offering vakalath on behalf of the petitioners, he filed the present IA for reopening of the suit. On 18-4-2000 this application was returned for compliance of certain office objections and seven days time was given for the

purpose. On 21-4-2000 this application seemed to have represented and on that day the Junior Civil Judge dismissed the application by stating as thereunder:

Since the judgment is dictated completely to the steno and going to be pronounced today, this petition is rejected.

3. Thereafter he seemed to have pronounced the judgment and decreed the suit.

4. Aggrieved by the docket order in this petitioner, the present revision petition is filed on 16-5-2000 and the petitioners obtained status quo orders on that. Thereafter the Counsel for the respondent filed vacate stay petition without serving the papers on the Counsel for the petitioner and a representation also seemed to have been made in the Court that the Counsel for the petitioner is out of station. But the learned Judge modified the orders of status quo as status quo pending, suit. As things stand no suit is pending as orders were already pronounced in this case. Hence, by virtue of the modification of the order practically, the petitioners were thrown out of the Court without a remedy. Be that as it may, this Revision is posted before me yesterday and as the Counsel for the respondent was not present in the Court, I adjourned the matter to this day. Even today he was called absent when the case reached in the afternoon. Subsequently while I was dictating the order some advocate represented on behalf of the Counsel for the respondent that the matter may be taken up tomorrow and as I have already stated dictating the judgment I rejected the request and the following orders is passed :

To my mind it appears that several illegalities have taken place in this case and the action of the Junior Civil Judge cannot be appreciated.

5. Firstly, the Court would not have accepted the request of the Counsel for the petitioners in reporting no instructions without giving a registered notice to the party of his intention to withdraw from the case. Admittedly, the Counsel for the petitioners reported no instructions without putting the petitioners on notice and the Court below erred in accepting his request. Be that as it may, when a Counsel to a party reported no instructions behind the back of his party, the Court is expected to give notice of hearing to the party before posting the case for judgment. That was not also done in this case for the Junior Civil Judge posted the case the judgment to 18-4-2000. When the present application is filed, he himself has given seven days time to comply with the objections raised by the office and when the petition was re-presented he dismissed it on the ground that the judgment is ready to be pronounced. Just on the ground that the judgment is ready, the Court cannot refuse to give a reasonable opportunity to the parties concerned to put forth their case. At any rate, the Judge should be known that on any order passed by him on this, IA, the party is entitled to carry the matter in revision and he would have waited for a reasonable time before pronouncing the orders. But, the learned Judge, dismissed the application and pronounced the judgment on the same day.

6. Coming to the revision petition filed by the petitioners, it is a well-established

practice that no vacate stay petition will be entertained in the vacation Court. The vacation Court is meant to pass urgent orders for upholding the majesty of law, but not for hearing vacate stay petitions. Further when a representation was made that the Counsel for the petitioners was out of station, I am of the view that the learned Judge would not have modified the order, practically throwing the petitioners out of the Court. For the illegalities that have taken place in this case, the petitioners, who could maintain their possession through out the pending of the suit, are now likely to be thrown out of the possession and the system of administration is not functioning for that purpose in this country.

7. Accordingly, the orders under revision is set aside and the Court below is directed to number the IA and further action may also be taken in the matter.

8. At this stage, Mr. A. Suryanarayana, Counsel appearing for the respondent strenuously contended that as the very suit itself was disposed of by Court below on 21-4-2000, the question of entertaining a revision petition u/s 115, CPC on an order passed by the Court below in an interlocutory application does not arise.

9. The facts leading to the filing of the revision petition are already referred supra and they are not in dispute. After the application was returned for compliance of certain office objections, the Counsel for the petitioners in the lower Court represented it after complying the objections well within the time granted by the Court and in fact before delivery of the judgment, the learned Judge dismissed the application. From the preamble of the judgment it is seen that after the trial is completed, the Court passed the order without giving notice to the petitioners, which goes to the root of the matter and the entire proceedings of the Junior Civil Judge in passing the decree should be declared as non est in law. In this case for the reasons already recorded the Court below committed the gravest mistake in passing the decree without giving notices to the petitioners and more so, after they entered appearance and sought for reopening of the matter.

10. Accordingly, the contentions of the Counsel for the respondent are rejected. As the petitioners are entitled to file an application to set aside the ex parte decree, if any application is filed to that effect, the Court below is directed to dispose of the same as well as the suit within two months from the date of receipt of a copy of the orders. Both the parties are directed to cooperate with the Court. If any party adopts dilatory tactics, the docket order shall reflect the same to take further action in the matter.

11. Left to myself, I would have gone through the judgment of the Junior Civil Judge, to find out the reasons for decreeing the suit when the respondent failed to get temporary injunction from Munsif Court to the High Court, and the Court is duty bound to dispose of the matter within the legal parameters even if a party to the proceedings has not participated in the proceedings due to various reasons. Merely on the ground that a party has not participated in the proceedings, the Court is not expected to pass an order against the parties who

have not participated in the proceedings without looking into the pleadings and other material available on record. As the parties did not make the copy of the judgment available, I leave the matter at this stage. Since, the application filed for reopening of the matter was allowed by this Court and as the Court below has already pronounced the orders, it is open to the petitioners to file an application to set aside the ex parte decree as the same was passed without hearing them.

12. Accordingly, the revision petition is allowed and the order under revision is set aside. No costs.