
(2004) 07 AP CK 0029

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5893 of 2003

C. Pandit Rao and Others

APPELLANT

Vs

Vihwakarma Association (Sangam)

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 41 Rule 25

Citation : (2004) 5 ALD 225 : (2004) 3 APLJ 7

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : G. Anandam, for the Appellant; P. Giri Krishna, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Civil Revision Petition is directed against the Order dated 28-10-2003 passed in I.A. 382 of 2003 in O.S. No. 358 of 2000 on the file of the IX Additional Chief Judge, City Civil Court (Fast Track Court) at Hyderabad, whereby the learned Additional Chief Judge allowed the application of the plaintiff filed under Order 1 Rule 10 of C.P.C. and permitted the plaintiff to implead D. Mohan Rao and P. Brahma Chary as defendant Nos. 8 and 9 in the suit.

2. The petitioners herein are defendant Nos. 1 to 7 in O.S. No. 358 of 2000 on the file of the IX Additional Chief Judge, City Civil Court (Fast Track Court) Hyderabad. The first respondent herein is the plaintiff in the said suit. He filed the suit for declaration that the trust deed dated 16-11-1996 is null and void. The petitioners-defendants filed written statement resisting the claim of the plaintiff.

3. The trial Court framed the following issues:

1. Whether the trust deed dated 16-10-1996 is null and void?
2. Whether the trustees have got any control over the properties of the plaintiff-

association and whether they are in possession of the plaintiff's properties?

3. Whether the plaintiff is entitled for decree as sought for peaceful possession and enjoyment of the day to day affairs of the plaintiff-association and its properties restraining the defendants not to interfere?

4. Whether the Court has got jurisdiction to try the suit?

5. To what relief?

4. On behalf of the plaintiff, PWs. 1 to 3 were examined and Exs.A-1 to A-10 were marked, and on behalf of the defendants 1 to 7, DWs.1 and 2 were examined and Exs.B-1 to B-10 were marked.

5. The learned Chief Judge by Judgment dated 8-11-2002 decreed the suit and declared the trust deed dated 16-10-1996 as null and void. Assailing the judgment and decree, the defendants 1 to 7 filed C.C.C.A. 276 of 2002. A Division Bench of this Court by judgment dated 25-4-2003 allowed the appeal and set aside the judgment and decree passed in O.S.358 of 2000 and remanded the matter to the trial Court to examine as to what could be the fate of the suit in the absence of the trustees who were known to the plaintiff when he filed the suit.

6. On remand, the plaintiff filed I.A. 382 of 2003 under Order 1 Rule 10 of C.P.C. to implead D. Mohan Rao, S/o. Yadagiri and P. Brahma Chary, S/o. Jagannadham, as defendant Nos. 8 and 9 in the suit. The defendant Nos. 1 to 7 filed counter resisting the application, and whereas the proposed parties reported no counter in the said application.

7. The learned IX Additional Chief Judge, on considering the material on record and on hearing the counsel for both parties, allowed the application by order dated 28-10-2003 and permitted the plaintiff to implead D. Mohan Rao and P. Brahma Chary as defendant Nos. 8 and 9 to the suit. Hence, this Civil Revision Petition by the defendant Nos. 1 to 7.

8. The learned Counsel for the petitioners-defendant Nos. 1 to 7 contends that the trial Court exceeded its jurisdiction in entertaining the application under Order 1 Rule 10 C.P.C. and therefore the impugned order is liable to be set aside. He also contends that the appellate Court in exercising powers under Order 41 Rule 25 CPC framed a specific issue and remanded the matter to the trial Court and such is the situation, the question of the trial Court entertaining the application under Order 1 Rule 10 does not arise. In support of his submissions he placed reliance on the decision of our High Court in Balaswaraswami Varu and Another Vs. Mallidi Dorayya and Others, , the decision of Madhya Pradesh High Court in Smt. Ramabai and Others Vs. Harbilas and Others, and the decision of Supreme Court in PROFULLA CHORONE REQUITTE AND OTHERS v. SATYA CHORON REQUITTE, AIR 1979 S.C. 1682.

9. In the last cited decision it has been held that in a suit by Trustees of endowed

property of family deity for possession of certain rooms against one of the shebait, non-impleadment of all the shebait effects the very maintainability of the suit.

10. In the first cited decision, our High Court held that when the appellate Court comes to a conclusion on a question of fact and remands the case for further enquiry, the lower Court has to act within the limits of the remand order and it cannot reopen the findings of the appellate Court.

11. In the second cited decision the Madhya Pradesh High Court held that the Court trying the suit on remand cannot act contrary to the superior court's direction. There cannot be any dispute with regard to preposition of law that the Court on remand cannot act contrary to the superior court's directions. But the question that calls for adjudication herein is whether the trial Court can entertain an application under Order 1 Rule 10 of C.P.C. in the circumstances of the case.

12. The learned Counsel for the respondent submits that the presence of proposed parties is essential to adjudicate the issue involved in the suit and therefore the order of the trial Court is not required to be interfered with.

13. The respondent filed the suit seeking declaration that the trust deed dated 16-10-1996 is null and void. Admittedly there were eleven trustees. Of them, seven were already on record as defendants, two of them namely P. Eshwaraiah and K. Nagabushanam were reported to be no more by the date of filing of the suit. The remaining two are D. Mohan Rao and P. Brahma Chary. The contention of the plaintiff-respondent is that D. Mohan Rao and P. Brahma Chary have resigned from the office of trustees even before filing of the suit.

14. This Court by order dated 20-4-2003 remanded the suit for trial Court. The operative portion of the judgment reads as follows:

"The trial Court considered the arguments and the evidence on record and decreed the suit. The learned counsel for the defendants/ appellants has challenged the judgment and decree of the trial Court mainly on the ground that the suit was not maintainable at all. In the plaint itself the names of the trustees were mentioned by the plaintiff, but all the trustees were not made parties to the suit. On the other hand, the trial Court did not even examine as to what would be effect on the suit in the absence of the trustees who were known to the plaintiff when he filed the suit. The maintainability of the suit in the absence of some of the trustees has not at all been considered by the learned trial Court. For these reasons, we allow the appeal, set aside the judgment and decree of the trial Court and remand the case back to the trial Court in order to enable the trial Court to decide the issue with regard to the maintainability of the suit in the absence of some of the trustees as defendants."

15. The petitioners-defendant Nos. 1 to 7 having specifically pleaded in the written statement that the suit is bad for non-joinder of all the trustees.

16. In the affidavit filed in support of the I.A. 382 of 2002, the plaintiff has

specifically pleaded that D. Mohan Rao and P. Brahma Chary have resigned from the office of the trustees even prior to the filing of the suit. To consider whether the above two persons resigned even prior to filing of the suit, their presence is essential. Therefore, allowing the application filed by the plaintiff under Order 1 Rule 10 seeking impleadment of D. Mohan Rao and P. Brahma Chary as defendants 8 and 9 is not in contravention to the direction given by this Court in C.C.C.A. No. 276 of 2002, indeed their impleadment would facilitate the trial Court to adjudicate the issue effectively.

17. Therefore, I do not see any reason to interfere with the impugned order. Accordingly, the Civil Revision Petition is dismissed.