
(2004) 03 AP CK 0109
In the Andhra Pradesh High Court
Case No : SA No. 1190 of 2003

Ch. Rukma Reddy and Others	Vs	APPELLANT
K. Dharma Reddy and Others		RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : (2004) 3 ALD 772 : (2004) 4 ALT 241

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; M. Madhava Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Respondents 1 and 2 filed OS No. 30 of 1995 in the Court of Junior Civil Judge, Miryalaguda against the appellant and two others for the relief of permanent injunction in respect of the suit schedule property. Through its judgment, dated 11-9-2000, the Trial Court dismissed the suit. Respondents 1 and 2 filed A.S. No. 18 of 2000 in the Court of the Senior Civil Judge, Miryalaguda. The first Appellate Court allowed the appeal through its judgment, dated 30-10-2003 and granted permanent injunction. The 1st defendant filed this second appeal challenging the judgment and decree of the first Appellate Court in AS No. 18 of 2000. He died after the appeal was presented and his legal representatives are brought on record as Appellants 2 to 5.

2. Sri P. Prabhakar Rao, learned Counsel for the appellant submits that the Trial Court had dismissed the suit, recording a finding that Respondents 1 and 2 are not in possession and enjoyment of the suit schedule property and unless the said finding was set aside, it was not open for the first appellate Court to allow the appeal and grant permanent injunction. The learned Counsel also submits that the first appellate Court did not frame any points for consideration nor

discussed the entire aspects of the matter.

3. Sri Madhava Reddy, learned Counsel for Respondents 1 and 2 submits that the Trial Court did not take into account the material facts as well as the sale deed of Respondents 1 and 2, in respect of the land in S. No. 645, and that the claim of the appellants was only in respect of a different land in S. No. 646. He submits that the findings record by the Trial Court were discussed by the first Appellate Court and that it reversed the same on the basis of the evidence on record.

4. The suit was filed for the relief of permanent injunction. On behalf of Respondents 1 and 2, PWs. 1 to 4 were examined and Exs. A1 to A12 were marked. On behalf of the appellant and Respondents 3 and 4 DWs 1 to 5 were examined and Exs. B1 to 13 were marked. The Trial Court discussed the matter at length with reference to oral and documentary evidence. It has also taken into account, the report submitted by the Commissioner appointed by the Court. On consideration of the same, it took the view that Respondents 1 and 2 failed to establish that they are in possession of the suit schedule property as on the date of filing of the suit.

5. In the appeal preferred by Respondents 1 and 2, the first Appellate Court has framed only one point, which in fact, does not make any sense at all. It reads as hereunder:

"Whether allow the suit by set aside the lower Court judgment and decree passed in OS No. 30 of 1995?"

6. It should not be forgotten that framing of a point in an appeal is an obligation imposed under Order 41 , Rule 31 of CPC. It was held by several Courts and the Honourable Supreme Court that failure to frame points by an appellate Court may prove to be fatal for the outcome of the appeal. A semblance of exemption from such requirement was given only in such cases where the Appellate Court undertakes discussion touching on each and every aspect of the matter though, points are not framed. Therefore, if it is evident that the Appellate Court had discussed the matter extensively with reference to each and every aspect of the matter, non-framing of point cannot be said to be fatal.

7. A perusal of the judgment of the Appellate Court discloses that only certain general observations were made, no discussion was undertaken. Except making a casual and cursory reference to of the evidence of PW3, the oral evidence was not touched at all. Reference was made to Exs.A1 to A3 and to Exs.B1 to B13. Rest of the evidence was not discussed.

8. One important aspect of the matter is that the Appellate Court did not choose to set aside the findings recorded by the Trial Court nor did it record any finding that Respondents 1 and 2 (plaintiffs) were in possession of the property. Further, it did not realize the limited relevance of ownership and prime importance of possession in suits for permanent injunction. In the judgment of the Appellate Court, the following sentence, viz."

"in order to grant equitable relief, the ownership and possession are important," runs contrary to the settled principle of law. further, the appellate Court granted permanent injunction in favour of Respondents 1 and 2, on the ground that the appellant did not sustain any loss. This hardly constitutes any basis for grant of permanent injunction. Any further discussion on the matter is likely to have impact on the merits of the matter.

9. Under these circumstances, the judgment and decree passed in AS No. 18 of 2000 on the file of the Senior Civil Judge, Miryalaguda is set aside and the matter is remanded to that Court for fresh consideration and disposal.

10. The revision is accordingly allowed. No costs.