
(2000) 02 AP CK 0068
In the Andhra Pradesh High Court
Case No : CRP No. 1402 of 1999

G. Venkata Rao

APPELLANT

Vs

Nallamolu Bala Koteswara Rao and another

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8

Citation : (2000) 2 ALD 755 : (2000) 3 ALT 304 : (2000) 2 APLJ 264

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

Bench : Single Bench

Advocate : Mr. K. Sarvabhoumarao, for the Appellant;

Judgement

1. The petitioner, plaintiff in OS No.5 of 1999 on the file of the Principal Junior Civil Judge, Chirala, has filed this revision petition questioning the orders passed by the trial Court in IA No.596 of 1999, wherein the request of the petitioner to cancel the marking of documents Exs. R1 to R4 on 19-3-1999 on behalf of the defendant in the suit after the case was adjourned to 22-3-1999 at the request of the petitioner, was negatived on the ground that the documents are public documents and hence no prejudice is caused to the petitioner herein.

2. The facts are not in dispute in this case. The petitioner filed OS No.5 of 1999 against the respondents seeking a permanent injunction restraining them from interfering with his possession and enjoyment over the suit schedule land and also filed IA No.596 of 1999 seeking temporary injunction. Initially the Court seemed to have granted temporary injunction. After the respondents entered their appearance and filed their counter, on the fateful day i.e., on 19-3-1999, the petitioner's Counsel requested for adjournment to 22-3-1999. The docket order of the Court on that day is as under:

"PNR. At request, heard arguments of the Counsel for the respondents. Marked Exs. R1 to R4. For arguments of the petitioner's Counsel, call on 22-3-1999."

The docket order clearly shows that the petitioner's Counsel having appeared in

the Court sought for adjournment of the hearing in the IA by two days and the Court agreed for the same. But, I am surprised to see that having acceded to the request of the Counsel for the petitioner, the Court heard the arguments on behalf of the respondents and also marked certain documents, a procedure unknown to law.

3. As per Order IX , Rule 8 of CPC, if the plaintiff does not appear when the suit is called on for hearing and when the defendant appears, the Court shall make an order that the suit be dismissed unless the defendant admits the claim or part thereof, in which case, the Court shall pass a decree against the defendant upon such admission and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder. In other words, the course open to the Court, if the Court is not willing to accede to the request of the Counsel for the petitioner is that it has to dismiss the suit for default and the other limb of Order IX, Rule 8 would not come into play as the defendant has not admitted either whole or part of the claim of the petitioner. But surprisingly, having acceded to the request of the petitioner's Counsel, the Court below erred in hearing the arguments of the respondents and marking the documents in his absence. The order of the Court below also clearly reveals that the documents that were marked on behalf of the respondents i.e., Exs.R1 to R4 were not even served on the Counsel for the petitioner before they were marked. Hence, the procedure followed by the Court below on 19-3-1999 is wholly erroneous and unsustainable in law. When an application is filed to cancel the marking of the documents, the observation made by the Court below that as the documents being marked are public documents, no prejudice is caused to the defendants, is erroneous for it is not proper to come to any conclusion at this stage without hearing the petitioner's Counsel. The further action of the Court below in dismissing of the application shows the ignorance of law of the Presiding Officer on the aspect. Hence, I am left with no other alternative except to set aside the impugned order of the Court below. The trial Court shall dispose of the injunction petition in accordance with law within 2 weeks from the date of receipt of a copy of this order by giving the petitioner an opportunity to lead evidence in support of his case in the first instance and then only hear the Counsel for the respondents.

4. The CRP is accordingly allowed. No costs.

5. The Registry is directed to transmit the records to the Court below forthwith.