
(1954) 11 AP CK 0018

In the Andhra Pradesh High Court

Case No : A. A. O. No's. 235 and 257 of 1953

Gangamrna

APPELLANT

Vs

Venkanna

RESPONDENT

Date of Decision : 24-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : AIR 1957 AP 481

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : M. Dwaraknath, for the Appellant; Y.C. Krishnaimirthy in No. 235 of 1953, for the Respondent

Final Decision : Dismissed

Judgement

Umamaheswaram, J.—C. M. A. No. 235 of 1953 is filed as against the Order of the Subordinate Judge, Eluru, reviewing his judgment dated 24-9-1952 in A. S. No. 38 of 1952 and restoring it to file. C. M. A. No. 257, of 1953 is filed as against the Order of remand passed by the Subordinate Judge in A. S. No. 38 of 1952.

2. When the suit was taken up for hearing by the District Munsif, an adjournment was applied for by the Defendant. The adjournment having been refused, the suit was proceeded with but was dismissed. When the appeal came on for hearing in the first instance, it was argued by Sri Padmanabhan on behalf of Sri Kesava Rao, the advocate on record. It appears from the affidavits filed by both the advocates that Sri Padmanabhan failed to point out that the suit was heard without taking evidence on behalf of the Defendant and that the proper course was to remand the case to the District Munsif.

The review application was based on the main ground that there was a mistake of counsel who appeared in the appeal. The learned Subordinate Judge accepted the statements contained in the affidavits filed by both the advocates appearing

for the Respondent. As pointed out by Patanjali Sastri J., in *Govinda Chettiar v. Varadappa Chettiar* 1939 2 Mad LJ 809: (AIR 1940 Mad 17) (A) the mistake of counsel would be a sufficient ground for granting review under Order 47, Rule 1, Code of Civil Procedure. The head-note correctly sets out the point decided by the learned Judge and is in the following terms:

The misapprehension owing to which Respondent's counsel did not urge all his arguments in support of the finding recorded in favour of his clients by the first Court and the consequent erroneous decision on the part of the Subordinate Judge that the counsel had no arguments to urge to meet the points raised by the Appellant's counsel are analogous to errors apparent on the face of the record so as to be a sufficient reason for review under Order 47, Rule 1, Code of Civil Procedure

3. I respectfully follow that judgment and hold (that the Subordinate Judge acted rightly in allowing I the review application. Having allowed the review application, the Subordinate Judge acted properly in remanding the case to the District Munsif for giving an opportunity to the Defendant to make out his defence. I, therefore, agree with the decision of the lower appellate Court and dismiss the appeals. There will be no order as to costs.