

(2011) 11 AP CK 0158

In the Andhra Pradesh High Court

Case No : CRP No"s. 3860 and 3861 of 2009

Karnakanti Gopi and others

APPELLANT

Vs

K. Ramesh and another

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2012) 2 ALD 330

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : V. Ravikiran Rao, for the Petitioners in both the CRPs, for the Appellant; Laxman Batechu, Counsel for the Respondents in both the CRPs, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—I have heard Sri V. Ravikiran Rao, the learned Counsel appearing for the petitioners and Sri Laxman Batchu, learned Counsel appearing for the respondents 1 and 2. CRP No. 3861 of 2009 is filed against the order dated 4.2.2009 passed by the VIII Additional District Judge, Nizamabad in IA No. 919 of 2008 in CMA No. 12 of 2008. Whereas CRP No. 3860 of 2009 is filed against the order dated 4.3.2009 passed by the VIII Additional District Judge, Nizamabad in CMA No. 12 of 2008 dismissing CMA No. 12 of 2009 and confirming the order dated 24.4.2008 passed by the Principal Junior Civil Judge, Nizamabad in IA No. 84 of 2008 in OS No. 23 of 2008.

2. The subject-matter in both the revisions is one and the same and between the same parties, therefore, both the civil revision petitions are disposed of by the following common order.

3. The respondents instituted OS No. 23 of 2008 on the file of the Court of Principal Junior Civil Judge, Nizamabad for injunction simpliciter in respect of certain landed properties against the revision petitioners. They also filed IA No.

84 of 2008 in the said suit seeking temporary injunction pending disposal of the suit. The revision petitioners contended inter alia before the learned trial Court that the suit is bad for non-joinder of necessary parties and also in view of the judgment passed in the earlier suit, OS No. 127 of 1982 in respect of the same properties having become final, the present suit instituted by the respondents is not maintainable. These and other contentions urged by the respondents were rejected by the learned trial Court, which granted temporary injunction allowing IA No. 84 of 2008. Aggrieved by the said order, the revision petitioners preferred CMA No. 12 of 2008 which came to be heard by the VIII Additional District Judge, Nizamabad. The revision petitioners filed IA No. 919 of 2008 under Order 41 Rule 27 of CPC to receive certain documents as additional evidence. It was contended by the revision petitioners before the learned Additional District Judge, the documents which they propose to bring on record are very much essential for considering the CMA and that in spite of due diligence they could not file documents in the trial Court. The learned Additional District Judge disposed of IA No. 919 of 2008 filed under Order 41 Rule 27 CPC independently by dismissing the said application. Subsequently the learned Additional District Judge also dismissed the CMA. Now, against the order dismissing the additional evidence application filed under Order 41, Rule 27 of CPC and the judgment in CMA No. 12 of 2008 the revision petitioners filed two separate civil revision petitions.

4. Sri V. Ravikiran Rao, the learned Counsel appearing for the revision petitioners questioned the legality and correctness of the order passed by the learned Additional District Judge, Nizamabad, while disposing of the additional evidence application as well as CMA.

5. I think it is not necessary to go into the merits of the case. According to the learned Counsel, the learned Additional District Judge, Nizamabad ought to have disposed of IA No. 919 of 2008 which is additional evidence application filed under Order 41 Rule 27 CPC along with the appeal and the procedure adopted by the learned appellate Court in disposing of IA No. 919 of 2008 without considering the appeal is illegal and the order is liable to set aside.

6. While disposing of the application filed under Order 41, Rule 27 CPC for receiving additional evidence, the appellate Court has to consider whether those documents are necessary for effectively and completely disposing of the appeal before it. For that purpose, it is essential to hear the appeal together with the additional evidence application. Unless the said procedure is adopted, the appellate Court may not be in a position to correctly appreciate as to whether the documents are to be received as additional evidence in the appeal and necessary for disposing of the appeal.

7. In the instant case, the learned appellate Court without hearing the appeal disposed of IA No. 919 of 2008, which is an application filed under Order 41 Rule 27 CPC to receive certain documents as additional evidence.

8. The learned Counsel appearing for the revision petitioners relied upon the judgment of the Supreme Court in State of A.P. Vs. M. Poshetty, , wherein it was held as follows:

It is always open to the Court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41, Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same. If not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, would be inappropriate. Further the reason given for the dismissal of the application is untenable.

9. In the instant case also by separately disposing of IA No. 919 of 2008, the appellate Court, in my view was not in a position to correctly appreciate as to whether the documents are to be received in CMA and whether they are necessary for considering the CMA. The procedure adopted by the appellate Court is not in accordance with law. Since the appellate Court failed to dispose of the additional evidence petition as well as the CMA simultaneously in accordance with law, the decision rendered by the first appellate Court being not legal and contrary to the established procedure is liable to be set aside in these revisions.

10. Consequently, the order passed by the VIII Additional District Judge, Nizamabad in IA No. 919 of 2008 in CMA No. 12 of 2008 and the judgment dated 4.3.2009 rendered in CMA No. 12 of 2008 are set aside. The matter is remitted back to the first appellate Court for consideration afresh with a direction to dispose of IA No. 919 of 2008 and CMA No. 12 of 2008 simultaneously. The civil revision petitions are therefore allowed without any order as to costs.