
(2007) 08 AP CK 0026
In the Andhra Pradesh High Court
Case No : C.M.A. No. 256 of 2007

Kolluru Brahmanandam

APPELLANT

Vs

Pata Penchala Ravi Kumar and Others

RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 43 Rule 1, 100

Citation : (2008) 2 ALD 806 : (2008) 1 ALT 427

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Sridhar Reddy, for the Appellant; Ambadipudi Satyanarayana, for Respondent Nos. 1 and 3 and Ch. Laxmi Chaya, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The matter is coming under interlocutory but both the counsel made submissions in elaboration and further made a request to dispose of the civil miscellaneous appeal itself. Hence, the civil miscellaneous appeal itself is being disposed of finally by this court.

2. In CMAMP. No. 547 of 2007 interim suspension was granted for a period of two months and subsequent thereto the said interim suspension was further extended for two more weeks and subsequent thereto on 8-2-2007 the said interim suspension already granted had been extended until further orders.

3. The Civil Miscellaneous Appeal is filed as against an order of remand made by the learned Principal District Judge, Nellore, in A.S. No. 100 of 2006. The operative portion of the order made in A.S. No. 100 of 2006 aforesaid reads as hereunder:

In the result, the appeal is allowed setting aside the judgment and decree of the lower court and the matter is remanded to the lower court for disposal afresh. Both the parties are permitted to adduce fresh evidence with regard to the status of P.W. 2 and also they are permitted to advance their contentions with regard to

the validity of the decree in O.S. 882/2002 and its binding nature. Each party do bear their own costs. Both parties shall appear before the Junior Civil Judge on 26-2-2007.

4. Sri P. Sridhar Reddy, the learned Counsel representing the appellant had taken this Court through the grounds raised in the civil miscellaneous appeal and also had pointed out the findings recorded by the appellate court and would maintain that while by making an order of remand, the appellate court in paragraph Nos. 7 to 9 recorded several findings on merits of the matter and these findings recorded by the appellate court would cause serious prejudice to the case of the appellant. The counsel would also submit that the evidence available on record already being sufficient, the appellate court could have decided the matter on merits.

5. Sri Ambadipudi Satyanarayana, the learned Counsel representing the respondents would point out that when it is the case of the appellant that no further evidence be adduced and the evidence available on record is sufficient, an order of remand need not be made at all and in such a case the appellate court as well could have disposed of the appeal on merits. However, the counsel would submit that on merits several positive findings had been recorded in favour of the respondent but ultimately the appellate court made an order of remand, may be taking into consideration the financial position of P.W. 2. The learned Counsel also placed strong reliance on the decision of the Apex Court in Narayanan Vs. Kumaran and Others, and had explained the scope and ambit of a civil miscellaneous appeal as against an order of remand under Order 43, Rule 1(u) of CPC and also second appeal u/s 100 of the Code of Civil Procedure.

6. Heard the counsel on record.

The appellant, who is the respondent in A.S. No. 100 of 2006 on the file of the Court of Principal District Judge, Nellore and the plaintiff in O.S. No. 677 of 2003 on the file of the Court of First Additional Junior Civil Judge, Nellore, had preferred the present civil miscellaneous appeal under Order 43, Rule 1(u) of the Code of Civil Procedure, being aggrieved of an order of remand made by the appellate court dated 12-2-2007. The plaintiff filed the suit for declaration of the right of the plaintiff in relation to the plaint schedule property and for the relief of permanent injunction. It is the case of the plaintiff that the property belonged to late Kalahasthi Bala Subramanyam, who died intestate on 23-3-2002 and his wife Lakshmamma has succeeded to the estate exclusively and she sold the plaint schedule property for valuable consideration on 15-3-2003 and executed a registered sale deed and put the plaintiff in possession of the schedule property. The defendants 2 and 3 are the brothers of the deceased Balasubramanyam. They are not entitled to any of the shares of Balasubramanyam.

7. The defendants resisted the matter to the effect that Bala Subrahmanyam purchased the property in 1996 and died being possessed of the property, which is being enjoyed by the defendants and the said Balasubrahmanyam was not

married and the defendants 2 and 3 are the only legal heirs and inherited the property. It was also pleaded that the deceased was a practising advocate at Nellore and his parents also predeceased him and defendants 2 and 3 sold the schedule property to the first defendant and delivered possession. The person, who sold the property to the plaintiff is Amperayam Lakshamma.

8. In the light of the respective pleadings of the parties, the following issues were settled by the Court of first instance:

(1) Whether the plaintiff is entitled for the relief of declaration of his right and title over the schedule property as prayed?

(2) Whether the plaintiff is entitled for the consequential injunction as prayed for?

(3) To what relief?

9. On behalf of the plaintiff, P.Ws. 1 and 2 were examined and Exs. A-1 to A-12 were marked. On behalf of the defendants, P.Ws. 1 to 4 were examined and Exs. B-1 to B-10 were marked. On appreciation of the evidence available on record, the Court of first instance decreed the suit and aggrieved by the same, the defendants carried the matter by way of appeal, A.S. No. 100 of 2006 and the appellate court at paragraph No. 6 framed the following points for consideration:

1. Whether Lakshamma P.W. 2 is the wife of the deceased Bala Subrahmanyam?

2. Whether the alienation made by her in favour of the plaintiff is valid and sustainable?

3. Whether the plaintiff is entitled for the declaration and injunction?

4. Whether the judgment and decree passed by the learned Junior Civil Judge is legal and sustainable?

5. To what relief?

10. The appellate court discussed the oral and documentary evidence available on record at paragraph Nos. 7, 8 and 9 and ultimately allowed the appeal setting aside the judgment and decree of the Court of first instance and made an order of remand at paragraph No. 10, which had been already specified supra.

11. On a careful analysis of the findings recorded by the appellate court, the appellate court while giving opportunity to the parties to adduce further evidence with regard to the status of P.W. 2 and also advance their contentions with regard to the validity of the decree in O.S. No. 882 of 2002 and its binding nature, had recorded several findings touching the merits and demerits. It is needless to say that while making an order of remand also the appellate court may go into the merits and demerits of the matter while appreciating the evidence. No doubt strong reliance was placed on the decision of the Apex Court in *Narayanan Vs. Kumaran and Others*, wherein the Apex Court while dealing with Order 41, Rule 1(u) and Section 100 of the CPC and an appeal from an order of remand held that it must be in compliance with requirements of Section

100 and hence must be confined to question of fact having a bearing on the order of remand and the court cannot go into excruciating details of fact and appreciate evidence.

12. As can be seen from the findings recorded by the appellate court, the appellate court virtually recorded several findings, which are in favour of the respondents herein, the defendants in the suit. But however, ultimately thought it fit to give further opportunity to the parties to let in further evidence relating to the status of P.W. 2 and also permitted to advance contentions relating to the validity of the decree in O.S. No. 882 of 2002 and its binding nature.

13. As can be seen from the peculiar facts and circumstances, the status of P.W. 2, the vendor of the plaintiff appears to be crucial and hence the appellate court thought it fit to make an order of remand. It is no doubt true that an order of remand cannot be made in a routine way unless the conditions specified in relation thereto under the CPC are satisfied. However in the light of the findings and reasons which had been recorded by the appellate court, this Court is of the considered opinion that an order of remand made by the appellate court as such cannot be found fault. Incidentally, it may be pointed out that the appellate court made certain observations touching merits and demerits of the matter while making an order of remand that always need not be taken that (sic. by) the appellate court and the findings recorded by the appellate court attained finality since operative portion of the order of remand always may have to be taken into consideration.

14. In the light of the same, since an order of remand is made permitting the parties to adduce further evidence relating to the status of P.W. 2 and also further advance contentions relating to the validity or otherwise of the decree in O.S. No. 882 of 2002, it is made clear that in the event of such further additional evidence is being adduced by the parties in the light of the observations made by the appellate court, the Court of first instance is at liberty to record appropriate findings.

15. Except making this observation, nothing further can be done and accordingly, the civil miscellaneous appeal being devoid of merit the same shall stand dismissed. No costs.