

(2013) 06 AP CK 0087

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5888 of 2011

P. Krishna Yadav

APPELLANT

Vs

M.S. Jayalingam and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 227

Citation : (2013) 4 ALD 812

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Komireddy Karamchand, for the Appellant; Rajanikanth Jwala, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—The respondents filed O.S. No. 683 of 2009 in the Court of III Senior Civil Judge, City Civil Court, Hyderabad, against the petitioner, for eviction from the suit schedule premises. They have also filed I.A. No. 2129 of 2009 under Order XV-A C.P.C., with a prayer to direct the petitioner to deposit the rents. On 18.02.2010, an ex parte order was passed in I.A. No. 2129 of 2009, directing that the petitioner shall deposit the arrears of rents from February, 2008, at the rate of Rs. 21,000/- per month, on or before 08.03.2010. On the ground that the order was not complied with, the defence of the petitioner was struck off. At that stage, the petitioner filed I.A. No. 575 of 2010 with a prayer to set aside the ex parte order in I.A. No. 2129 of 2009. That was dismissed on 19.11.2010. C.M.A. filed against the order in I.A. No. 575 of 2010 is said to have been dismissed. Once the order in I.A. No. 2129 of 2009 became final, the trial Court decreed the suit on 02.06.2011, solely on the ground that the defence of the petitioner was struck off.

2. The petitioner filed I.A. No. 621 of 2011 under Order IX Rule 13 C.P.C., with a prayer to set aside the ex parte decree, dated 02.06.2011. The application was

opposed by the respondents. The trial Court dismissed the I.A., through order, dated 20.09.2011. Hence, this revision.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. From a perusal of the record, it appears that there is serious dispute as to the relationship of the parties vis-?-vis the suit schedule premises. The respondents, no doubt, filed an application under Order XV-A C.P.C. by treating the petitioner as their tenant. However, an ex parte order came to be passed and the effort made by the petitioner did not fructify. Solely on the ground that the defence of the petitioner was struck off, on account of non-compliance with the order dated 18.02.2010, the trial Court passed the ex parte decree. The application filed by the petitioner under Order IX Rule 13 C.P.C. was dismissed.

5. This Court is of the view that when serious dispute exists as to the rights of the parties, vis-?-vis a valuable item of property, the trial Court ought to have given an opportunity to the petitioner to put forward his contention. Right from the inception, the petitioner was denied the opportunity, on the sole ground that an ex parte order was passed under Order XV-A C.P.C. No trial has taken place and the only basis for decreeing the suit is non-compliance with the order passed in I.A. No. 2129 of 2009. Assuming that the defence of the petitioner was struck off, the Court is still under obligation to satisfy itself about the legality of the claim of the respondents. For example, if the respondents do not have any title to the property, or that the record does not disclose the existence of any lease between themselves and the petitioner, there would not have been occasion, for decreeing the suit. Almost everything was taken for granted, simply on the ground that the defence of the petitioner was struck off. Such an approach cannot be countenanced.

6. The C.R.P. is accordingly allowed, and the order under revision is set aside. As a result, I.A. No. 621 of 2011 shall stand allowed and the ex parte decree, dated 02.06.2011, is set aside.

7. Though the defence of the petitioner was struck off, on account of non-compliance with the order in I.A. No. 2129 of 2009 and the same was upheld in the C.M.A., this Court is of the view that the requirements of justice and fair play demand that the petitioner shall be given an opportunity, in the context of passing orders in the I.A. filed under Order XV-A C.P.C. In exercise of supervisory jurisdiction under Article 227 of the Constitution of India, this Court sets aside the ex parte order in I.A. No. 2129 of 2009 and directs the trial Court to pass fresh orders in the said I.A. after giving opportunity to the petitioner.

8. In case the trial Court passes an order to the effect that the petitioner is the tenant and is under obligation to pay rents, the further proceedings in the suit shall take place, only after the petitioner makes deposit of the amount so determined. In case the petitioner fails to deposit any amount that may be determined by the trial Court within the stipulated time, the facility created

under this order shall cease and the ex parte decree passed by the trial Court shall revive and it shall be open to the respondents to execute the same. The miscellaneous petition filed in this revision petition shall also stand disposed of. There shall be no order as to costs.