
(2016) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No.3336 of 2016

Piska Jayalakshmi

APPELLANT

Vs

Mohd. Abdul Basheer

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Citation : (2017) 2 AndhLD 16

Hon'ble Judges : A. Rajasheker Reddy, J.

Bench : Single Bench

Advocate : Sri J. Prabhakar, Advocate, for the Petitioner; Sri E.V.V.S. Ravi Kumar, Advocate, for the Respondent No.1

Final Decision : Disposed Off

Judgement

A. Rajasheker Reddy, J.—This revision petition is filed against the order, dated 20.04.2016, passed in C.M.A. No.6 of 2015 by the Principal District Judge, Karimnagar, whereby and where under, the appellate Court has set aside the order and decree, dated 05.02.2015, in I.A. No.854 of 2014 in O.S. No.216 of 2014 on the file of Senior Civil Judge, Karimnagar, by which, the trial Court has granted injunction in favour of the revision petitioner.

2. Learned counsel for the petitioner submits that earlier the petitioner filed O.S. No.77 of 2010 on the file of Senior Civil Judge, Karimnagar, for declaration of title and perpetual injunction against her father in respect of the same subject land and only on the ground that father of the petitioner died and no steps to bring on record his legal representatives were taken in time, the said Suit was dismissed as abated, but, in fact, I.A. No.915 of 2014 filed in the said Suit to set aside the abatement was allowed on 29.02.2016. He further submits that by virtue of Gift Deed, dated 20.05.1995, petitioner came into possession of the suit property and that the same was not considered by the appellate Court, while passing the impugned order, reversing the order passed by the trial Court. He also submits that the injunction granted in O.S. No.77 of 2010 in favour of the petitioner is still in operation and seeks to set aside the impugned order.

3. On the other hand, learned counsel for respondent No.1 submits that since the trial Court has not marked the documents while granting injunction and there is serious dispute with regard to the title of the suit schedule property, the appellate Court has rightly held that the petitioner is not entitled to injunction and set aside the order, dated 05.02.2015. He also submits that the petitioner already filed O.S. No.77 of 2010 against her father and an implead petition is also filed therein for impleading the vendor of respondent No.1 and no reason is given for filing the present Suit. In support of his contention, he placed reliance on a Division Bench Judgment of this Court in T. Bhoopal Reddy and another v. Smt. K.R. Laxmi Bai and another, 1998 (1) ALT 292 (DB).

4. Now, it is to be seen that though the appellate Court found that the trial Court has not marked the documents, it has not taken any steps to mark the documents and went on proceeding on merits and set aside the order, dated 05.02.2015, instead of remanding the matter to the trial Court.

5. In T. Bhoopal Reddys case (supra), it is held thus:

A.P. Civil Rules of Practise and Circular Orders, 1990, Rule 115 Marking of Exhibits at interlocutory stage Rule envisages marking of documents as exhibits in evidence during trial of Suit However, it does not exclude marking of documents in interlocutory matter Nowhere it is stated that interlocutory matter be decided only on affidavits Directions therefore given to mark documents on which both sides would rely at interlocutory stage with P and R series to locate the documents and know its contents in order to come to a prima facie conclusion by trial Court and appellate Court Observations made to incorporate a Rule in Civil Rules of Practise to that effect View taken by a single Judge in G. Sambraiyams case (1995 (1) ALT 305) that documents cannot be given a marking in interlocutory applications disapproved.

6. Rule 60 of Civil Rules of Practise reads thus:

60. Proof of facts by affidavit:- Any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.

7. In view of the same, without going into merits of the case, I deem it appropriate to set aside the impugned order, dated 20.04.2016, and remit the matter to the trial Court for deciding the issue afresh by marking the documents filed by both parties.

8. Accordingly, the revision petition is allowed setting aside the impugned order, dated 20.04.2016, and the matter is remitted to the trial Court for deciding the issue afresh by marking the documents filed by both parties.

9. Learned counsel for both sides would submit that O.S. No.77 of 2010 filed by

the revision petitioner, in respect of the same subject land is pending before the same Court and as such, both the Suits i.e., O.S. No.77 of 2010 and O.S. No.216 of 2014 can be tried together. In view of the same, the trial Court is directed to dispose of both the Suits together by clubbing the same.

10. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. There shall be no order as to costs.