

(1973) 10 AP CK 0004
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 3 of 1970

Rashid Shapurji Chenai and Others

APPELLANT

Vs

The Collector Land Acquisition

RESPONDENT

Date of Decision : 15-10-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 17 Rule 3

Citation : AIR 1974 AP 273

Hon'ble Judges : Alladi Kuppaswami, J; A.V. Krishna Rao, J

Bench : Division Bench

Advocate : Jaleel Ahmed, for the Appellant; Principal Govt. Pleader, for the Respondent

Judgement

Alladi Kuppaswami, J.—We are of the view that the order of the learned District Judge has to be set aside on the simple ground that the order ought not to have been made on merits in the circumstances of the case. In the order itself it is stated that the petitioners were absent and they were not represented by any counsel. The learned District Judge, nevertheless discussed the merits of the case and came to the conclusion that the Collector was justified in paying at the rate of one rupee per square yard and dismissed the petition for enhancement of compensation.

2. Under Order 17, Rule 2 of the Code of Civil Procedure, where the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by O. 9 or make such other order as it thinks fit. Under Order 17, Rule 3, C.P.C. the court may proceed to decide the suit forthwith when a party to the suit fails to produce evidence or to cause the attendance of the witness etc. The proviso to Order 17 Rule 3 is clear to the effect that where there is a default under Rule 3 as well as default of appearance under Rule 2, the court will proceed under Rule 2. Inasmuch as there was a default of appearance under Rule 2, the court had to proceed under Rule 2 only. Under that provision it could dismiss the suit for default under Order 9 or make

such other order as it thinks fit. Having regard to the express provision of Order 17, Rule 3 proviso, the expression "as it thinks fit" cannot mean that the Court can decide the suit. This proviso was introduced by way of an amendment on 27-4-1961, before the order under appeal was passed. Even in the absence of the proviso before the amendment of Order 17, Rule 3, it was held by this Court in *M. Agaiah Vs. Mohd. Abdul Kereem*, that where there was a default under Order 17, Rule 3 as well as a default under Rule 2 the court should proceed only under Rule 2. The Madras High Court had also taken the same view, though some other High Courts took a different view and held that the Court can proceed under Order 17, Rule 3 if there is material on record to enable the court to come to a decision on the merits and that otherwise the Court should proceed under Rule 2. But whatever might have been the position before the amendment, it is clear that after the amendment, the court can only proceed under Order 17, Rule 2. It cannot proceed to decide the suit under Order 17, Rule 3 as has been done in this case by the Court below. Having regard to the clear provisions of the rules and the decision referred to above, the learned Government Pleader was not able to support the order of the Court below.

3. We therefore, set aside the order of the Court below. In the view we have taken, it is unnecessary to consider the other contentions raised by the appellants. There will be no order as to costs. The C.C.C.A. is allowed and the matter remanded for fresh disposal after taking evidence. There will be refund of Court-fees.

4. Order accordingly.