

(2011) 01 AP CK 0047

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4204 of 2010

V. Devender Reddy and Others

APPELLANT

Vs

T. Devanarayana Reddy

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

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

Citation : (2011) 4 ALD 144 : (2011) 8 RCR(Civil) 1349

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—Heard both the learned Counsel.

2. This civil revision petition is filed by the revision Petitioners against the judgment passed in C.M.A. No:12 of 2009 on 17.8.2010 by the IV Additional District Judge, Tirupathi.

3. The revision Petitioners are the Defendants-Appellants in C.M.A.12 of 2009 on the file of the Court of IV Additional District Judge, Tirupathi.

4. The Respondent-Plaintiff filed O.S. No:691 of 2009 on the file of the Principal Junior Civil Judge, Tirupathi seeking permanent injunction in respect of the schedule mentioned property, which is a vacant site against the revision Petitioners. In the said suit, the Respondent filed I.A.6706 of 2009 for grant of temporary injunction pending disposal of the suit.

5. The said interlocutory application was enquired into and was disposed of on merits by the Principal Junior Civil Judge, Tirupathi by granting temporary injunction in favour of the Respondent-Plaintiff and against the revision Petitioners.

6. Having aggrieved, the revision Petitioners filed C.M.A. 12 of 2009 on 17.8.2010, which was heard and disposed of by the IV Additional District Judge,

Tirupathi, dismissing the C.M.A. and confirming the order passed by the Principal Junior Civil Judge, Tirupathi in I.A. No:6706 of 2009 in O.S. No:691 of 2009.

7. Challenging the judgment dated 17.8.2010 passed in C.M.A.12 of 2009, the present revision petition is filed.

8. The learned Counsel appearing for the revision Petitioners would contend that in the C.M.A., the revision Petitioners filed a petition under Order 41 Rule 27 CPC to receive the copy of the judgment in O.S. No:62 of 1999 and the IV Additional District Judge, Tirupathi disposed of the C.M.A. without passing any order on the additional evidence petition filed by the revision Petitioners and therefore, the order is liable to set aside.

9. On the other hand, the learned Counsel appearing for the Respondent-Plaintiff would submit that both the Courts below considered the other evidence apart from Ex.P2 document which is said to be a partition deed, dated 15.4.1985 and concurrently held that the Respondent-Plaintiff is entitled for temporary injunction pending disposal of the suit and therefore, the order cannot be interfered with.

10. Indisputably, the Respondent-Plaintiff relied upon Ex.P2 partition deed dated 15.4.1985 and his version is that the properties are no longer joint and they were partitioned under the said partition deed.

11. The contention of the revision Petitioners is that the same document was marked as Ex.A1 in O.S.62 of 1999 on the file of the IV Additional District Judge, Tirupathi and the Court had categorically held by its judgment in the said suit that the very document i.e., Ex.P2 is a concocted one. Therefore, they wanted to adduce the said document as additional evidence and according to them, at the time of enquiry in I.A.676 of 2009 in O.S.691 of 2009 before the Principal Junior Civil Judge, Tirupathi, the finding of the learned Judge in O.S. No:62 of 1999 was not within their knowledge and therefore, there was no occasion for them to file the said document at that point of time.

12. I have perused the judgment passed by the IV Additional District Judge, Tirupathi in C.M.A.12 of 2009.

13. The learned IV Additional District Judge, Tirupathi even while disposing the C.M.A. did not pass any order on the additional evidence petition filed by the revision Petitioners seeking to receive the additional evidence on their behalf i.e., the certified copy of the judgment in O.S. No:62 of 1999.

14. For the purpose of disposing of this revision petition, I am not going into the merits of the case and I want to examine the correctness and legality of the order passed by the learned IV Additional District Judge, Tirupathi without rendering any decision on the additional evidence petition filed by the revision Petitioners.

15. Apart from the fact whether there is some other evidence on record justifying

granting of temporary injunction or not, it is obligatory on the part of the IV Additional District Judge, Tirupathi to pass some order on the additional evidence petition simultaneously along with the judgment in the C.M.A.

16. Without any such order on the additional evidence petition and in the absence of recording any finding as to whether the document sought to be adduced as additional evidence can be permitted or not, passing the judgment in the C.M.A. itself, no doubt amounts to illegality.

17. Irrespective of the fact whether the finding in the earlier suit in O.S.62 of 1999 as to the genuineness of Ex.P2 is binding on the Principal Junior Civil Judge while deciding the I.A or the IV Additional District Judge, Tirupathi while deciding the C.M.A, the fact remains that it is a material piece of evidence for the revision Petitioners. A decision has therefore to be rendered by the IV Additional District Judge, Tirupathi while disposing of the C.M.A. as to whether the said document in question can be taken as additional evidence. But, the learned Judge has failed to do so and the judgment passed by the IV Additional District Judge, Tirupathi is therefore unsustainable and is liable to be set aside. In this view of the matter, this is a fit case to remand the matter back to IV Additional District Judge, Tirupathi for fresh disposal.

18. Therefore, the judgment passed in C.M.A. by the IV Additional District Judge, Tirupathi is set aside and the matter is remanded back to the IV Additional District Judge, Tirupathi to dispose of the additional evidence petition simultaneously along with the main C.M.A. after giving an opportunity to both the parties and to render judgment in accordance with law. Any of the observations made in the course of this order with regard to the merits of the contentions urged by both the parties, are limited only for the purpose of disposing of this revision petition and the lower appellate Court shall not be influenced by any of these observations and the lower appellate Court shall have to arrive at the decision independently.

19. Accordingly, this revision petition is allowed. No costs.