
(2006) 02 AP CK 0086
In the Andhra Pradesh High Court
Case No : CMA No. 65 of 2006

Zahoor Bee and Others

APPELLANT

Vs

Unkonda Venkataiah (Died) and Others

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 9

Citation : (2006) 3 ALD 158 : (2006) 3 ALT 431

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.A. Bari, for the Appellant; I. Aga Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—If one is looking for an instance in the field of law, for application of the adage "a stitch in time, saves nine", the present case provides for one. In fact, the concerned Court omitted to put the stitches on more than one occasion, and the loss was substantial. The saga is spread over, one year short of quarter of a century.

2. The respondent herein filed O.S. No. 84 of 1982 in the Court of Subordinate Judge, Karimnagar, against the appellants, for the relief of declaration of title in respect of 35 guntas of land in Survey No. 689 of Peddapally Village and for recovery of damages of Rs. 46,000/-. A new Sub-Court, now known as the Court of Senior Civil Judge, was established at Peddapally. Therefore, the suit was transferred to that Court and re-numbered as O.S. No. 39 of 1987. Shortly thereafter, it was dismissed for default on 7-7-1987.

3. The respondent filed I.A. No. 365 of 1987 under Order 9 Rule 9 C.P.C., for setting aside the order, dated 7-7-1987. The LA. was kept pending for about six years. On 5-7-1993, the trial Court not only allowed the I.A., but proceeded to decree the suit ex parte. Now, it came to the turn of the appellants to file an application, being I.A. No. 431 of 1993, under Order 9 Rule 13 C.P.C. to set aside

the ex parte decree. The I.A. was dismissed on 28-9-2002. Hence, this C.M.A.

4. Sri M.A. Bari, the learned Counsel for the appellants, submits that whatever may have been the basis for the trial Court in allowing I.A. No. 365 of 1987, at a time where there was no representation on behalf of the appellants herein, there was absolutely no justification for it, to have decreed the suit ex parte, on the same day. He submits that the reasons furnished by the trial Court in dismissing I.A. No. 431 of 1993 are not all germane. Learned Counsel contends that in the total span of the suit, the trial Court never applied its mind to the facts of the case, and what holds the field as on today, is an ex parte decree passed on the same day, on which the order dismissing the suit for default, was set aside.

5. Sri I. Aga Reddy, the learned Counsel for the respondent, submits that the valuable rights of the respondent, in relation to a landed property in Survey No. 689, were substantially defeated, on account of the litigation initiated on behalf of the appellants, by filing O.S. No. 26 of 1977, and that when the respondent sought redressal, the appellants did not co-operate. He submits that the trial Court was left with no alternative, except to pass an ex parte decree. He contends that the appellants failed to satisfy the trial Court that there existed a valid justification for them, in remaining absent, when I.A. No. 365 of 1987 was taken up for hearing.

6. The respondent filed the Suit way back in the year 1982. This, in turn, was the offshoot of a decree, passed in O.S. No. 26 of 1977, filed by some of the appellants. For one reason or the other, it could not be disposed of, for a period of five years, when it was pending before the Court at Karimnagar. It was transferred to the Court of Senior Civil Judge, Peddapally, which was newly established. The trial Court does not appear to have been mindful of the transitional difficulties of the parties, which involve engagement of Advocates at the new place, procuring files from the Counsel at Karimnagar, entrustment of the same to the Counsel at Peddapally and other related problems, as a result of transfer of the suit. Shortly after he received the suit from the Court at Karimnagar, the learned Senior Civil Judge, Peddapally, dismissed it for default. Immediately, the respondent filed LA. No. 365 of 1987 under Order 9 Rule 9 C.P.C. The trial Court did not exhibit even a fraction of its enthusiasm or urgency, that it exhibited in dismissing the suit for default, when it ultimately came to the question of disposing of LA. No. 365 of 1987. It was kept pending for about six years. Having woken up from the deep slumber, the trial Court proceeded with a jet speed. On 5-7-1993, it not only allowed I.A. No. 365 of 1987, but proceeded to decree the suit ex parte.

7. The trial Court ignored the fundamental requirement that whenever a suit, which was dismissed for default is restored, for all practical purposes, it needs to be taken as though it is filed afresh, and the defendant must be given an opportunity. The Court is under obligation to examine the merits of the matter in detail, particularly from the points of view of limitation, maintainability etc., and render a reasoned judgment. The fact that the defendant in a suit remained ex

parte, by itself, does not provide a justification, for a Court to decree the suit, as prayed for, unless it is satisfied on merits. The satisfaction, in this regard, must be reflected in the judgment and a Court does not have the prerogative to keep the satisfaction for itself. The judgment in O.S. No. 39 of 1987 reads as under:

LA. No. 365/87 allowed. Suit is restored to file. As the Respondents/Defendants remained ex parte, the plaintiff is examined as P.W.I. Suit claim is proved. Suit is decreed with costs as prayed for.

It can safely be said that it was the most unsatisfactory way of disposal of the suit, which was restored, just then.

8. On coming to know that the suit was decreed ex parte, the appellants filed application under Order 9 Rule 13 C.P.C. The trial Court maintained consistency, in keeping this application also, pending for nine years. Even assuming that there was any non-co-operation from the parties, for disposal of the LA., the inaction of the Court is totally inexcusable. Once it woke upto dispose of the LA., after nine years, it exhibited the usual impatience. The reason furnished by the trial Court in dismissing the application is some what curious. The only paragraph, that dealt with the matter on merits, reads as under:

At the outset, I may say that this petition arose out of the O.S. No. 39/87 filed by the respondents/plaintiffs for declaration of title over the suit lands and as seen in the docket sheet that the petitioner was not diligent in persons, as a result, the case was procrastinate years together without any grounds. The Court endeavoured to expedite the matter to dispose the matter as early as possible, whereas the petitioners created impediment not to dispose the matter as early as possible and the reasons stated by the petitioners for non appearance on the date of trial and finally the suit was passed ex parte decree on 5-7-1993.

The facts mentioned in the said paragraph hardly receive any support from the record. In a way, it can be said that it was an imagination on the part of the Officer, who passed the order. The record indicated otherwise.

9. The facts referred to above clearly disclose that in a span of about 25 years, the trial Court dealt with the suit on three occasions. On the first occasion, it dismissed the suit for default, in utmost haste. On the second occasion, it committed a serious irregularity in decreeing the suit ex parte on the same day, on which it was restored. On the third occasion, it perpetrated injustice by sustaining the said ex parte decree. The whole exercise is in a very bad taste and in a way, it can be said that it is a sad reflection on the functioning of the Court.

10. For the foregoing reasons, the C.M.A. is allowed, and the order under appeal is set aside. To avoid further delay in the matter, LA. No. 431 of 1993 is allowed and the trial Court is directed to proceed with the trial of the matter on day-to-day basis, once the parties or their Counsel appear before it, on 20-2-2006. In case, there is no co-operation from the respondent, it shall be open to the trial Court to dismiss the suit for default. If non-co-operation is from the appellants

herein, it shall be open to it to decree the suit ex parte. In either of the cases, it shall record specific and detailed reasons therefor. There shall be no order as to costs.