

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Miscellaneous Appeal No.29 of 2015

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Dated 11.02.2015
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Between:

Siragam Gangi Reddy and 4 others

...Appellants

and

Siragam Uttama Reddy and 43 others

...Respondents

Counsel for the Appellants: Mr.O.Manohar Reddy

Counsel for the respondents: Mrs.TV.Sridevi

The Court made the following:

Judgment:

This Civil Miscellaneous Appeal arises out of Order, dated 28-11-2014, in I.A.No.478 of 2013 in OS.No.64 of 2013, on the file of the Court of the learned IV Additional District Judge (FTC), Anantapuramu.

The appellants have filed the above-mentioned suit for declaration of title and permanent injunction restraining the respondents from

interfering with their possession of the suit schedule properties. Along with the suit, they have filed IA.No.478 of 2013 for temporary injunction. The appellants have pleaded that the plaint A schedule properties were their ancestral properties; that as the ancestors of the respondents were causing obstruction to the enjoyment of the said properties by their ancestors, their ancestors have filed OS.No.29 of 1979 on the file of the Sub-Court, Ananthapuramu, which was later transferred to the Sub-Court, Kadiri, and renumbered as OS.No.19 of 1984; that the said suit was dismissed by holding that the plaintiffs therein are not entitled to seek partition as there was a previous partition; that against the said dismissal, the ancestors of the appellants have filed an appeal; and that this Court, while dismissing the said appeal, has observed that instead of filing a suit for partition, the appellants therein ought to have filed a suit for declaration of title. Hence, the appellants filed the above-mentioned suit along with the application for temporary injunction.

The appellants have relied upon partition deeds, dated 01.12.1933, 05.02.1957 and 30.01.1965, in support of their plea of title and

possession of the suit schedule properties. The respondents have resisted the application filed by the appellants. By the above-mentioned order, the lower Court has dismissed the same.

A perusal of the order passed by the Court below would show that after discussing the rival contentions of the parties, it has observed that since the appellants have filed the application for interim injunction, they shall prove that they are in possession and enjoyment of the suit schedule properties as on the date of filing of the suit, but they did not file any documentary proof in support of their plea.

Mr.O.Manohar Reddy, learned Counsel for the appellants, has drawn the attention of this Court to the list comprising 15 items of documents forming part of the plaint filed by the appellants. While serial Nos.1 to 10 were computer typed, serial Nos.11 to 15 were written in manuscript. The learned Counsel submitted that as there is no practice of marking the documents filed along with the plaint as exhibits at the interlocutory stage, the Court must nevertheless refer to the contents thereof while adjudicating the interlocutory applications.

Mrs.TV.Sridevi, learned Counsel for the respondents, has submitted that she has no instructions as to whether the appellants have filed any documents.

Ordinarily, the documents filed in the suit are formally marked during the trial through witnesses. However, as per the established convention and practice, the documents filed by both parties in the suit are referred by the Court for disposing of the interlocutory applications by referring to them as exhibits or annexures. If the appellants have filed any documents along with the plaint, I do not find any justification for the lower Court not to refer those documents while disposing of the IA. In the above facts and circumstances of the case, the case is remanded to the lower Court for fresh consideration. It shall consider the documents stated to have been filed by the appellants along with the plaint by assigning appropriate markings to them. Similarly, it shall also examine the documents, if any, filed by the respondents.

Accordingly, Order, dated 28-11-2014, in I.A.No.478 of 2013 in OS.No.64 of 2013, on the file of the Court of the learned IV Additional District Judge (FTC), Anantapuramu, is set aside. The

lower Court shall dispose of the IA afresh, after hearing both sides and after discussing the documentary evidence produced by both parties, within two months from the date of receipt of this order.

As a sequel to disposal of the Civil Miscellaneous Appeal, CMAMP.No.41 of 2015, filed by the appellants for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 11th February, 2015
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