

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

C.R.P.No.2220 OF 2024

Between:

Gudi Satyanarayana Reddy

... **Petitioner**

And

Maggidi Narsaiah (died) per L.Rs. & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 30.07.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**C.R.P.No.2220 OF 2024****% 30.07.2024****Between:**

Gudi Satyanarayana Reddy

... Petitioner**And**

\$ Maggidi Narsaiah (died) per L.Rs. & others

... Respondents**< Gist:****> Head Note:**

! Counsel for the Petitioner : Sri Lingam Divakara Rao

^ Counsel for Respondents : Sri M. Mallesham

? Cases Referred:

(1) 2012 (8) SCC 148 equivalent 2012 SCC Online 528

HON'BLE MRS. JUSTICE SUREPALLI NANDA**C.R.P.No.2220 OF 2024****ORDER:**

Heard Sri Lingam Divakara Rao, learned counsel appearing on behalf of the petitioner and Sri M. Mallesham, learned counsel appearing on behalf of the respondents.

2. The Civil Revision Petition is filed challenging propriety and legality of the order dated "11.06.2024 in I.A.No.39 of 2023, in A.S.No.11 of 2017 on the file of the Additional District Judge at Godavarikhani", whereunder a petition filed under Order 41 Rule 27 read with Section 157 CPC filed by the Appellants/plaintiffs was allowed.

3. For the sake of convenience, the parties are referred to as they are arrayed in the appeal before the lower Court.

4. The appellants/plaintiffs filed I.A.No.139 of 2023 in A.S.No.11 of 2017 on the file of Additional District Judge at Godavarikhani, under Order 41 Rule 27 CPC, praying the Court that the documents namely certified copy of Registered Sale Deed, Rythu Passbook and Simple Sale Deeds etc., may be considered in the interest of justice.

5. The appellants/plaintiffs plea is that they filed petition before the trial Court to receive those documents and the Court dismissed the petition and they filed revision petition before the Hon'ble Court and the Revision Petition was returned and their counsel did not take any steps in respect thereof and in the meanwhile trial Court dismissed the suit and the documents are necessary to decide the case and hence those documents may be considered as additional evidence in the interest of justice.

6. The respondents/defendants filed counter alleging that the petition is filed 7 year after filing of the appeal and there is no mention about the documents in the plaint and so the genuineness of the documents had to be doubted and that the petition is filed to fill up gaps in evidence and that the petitioner having preferred revision petition against the order of dismissal of the petition to receive the documents cannot invoke the provisions of the Order 41 Rule 27 hence petition is liable to be dismissed and the documents cannot be considered at the Appellate stage as per the whims and fancies of the petitioner/appellant.

7. The appellate Court after considering the material on record partly allowed the petitioner I.A.No.139 of 2023 in

A.S.No.11 of 2017 vide its order dated 11.06.2024 observing as under:

"In the result, this petition is partly allowed by receiving the documents i.e., certified copy of registered sale deed document bearing No.707/1986 along with its translation copy as well as certified copy of registered sale deed document bearing No.2963/1977 along with its translation copy and raithu pass book vide its No.492 to be marked on behalf of plaintiff. No costs."

Feeling aggrieved by the same, the respondents/defendants filed the revision petition.

8. The Judgements relied upon by the learned counsel on record are as under:

(1) (1979) 2 Supreme Court Cases 601 in "Syed Abdul Khader v. Rami Reddy and others".

(2) (2022) 7 Supreme Court Cases 247 in "Sanjay Kumar Singh v. State of Jharkhand".

(3) In Criminal Appeal No.2020 of 2009 (Arising out of SLP (Crl.)No.198 of 2009 in "Bharat Amratlal Kothari v. Doshkhan Samadkhan Sindhi and others."

(4) 2020 LawSuit (SC) 877 in Civil Appeal No.6325 of 2015, 6326 of 2015 in Akella Lalitha v. Konda Hanumantha Rao and another".

(5) In Civil Appeal No.9106 of 2012 in M/s.Rajasthan Art Emporium v. Kuwait Airways and another with Civil Appeal No.9194 of 2012".

This Court opines that the Judgments relied upon by both the learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondents do not apply to the facts of the present case.

9. The lower Court ordered the documents to be received for considering them as additional evidence on the ground that they are necessary for pronouncing Judgment. But the Court did not give any reasons for coming to the conclusion that the documents are essential for pronouncement of Judgments.

10. It is only on perusal of the pleadings and evidence of both the parties the Court can assess whether the documents have necessary bearing on the issues involved and so need to be considered as additional evidence.

11. That exercise can be done only at the final hearing of the appeal itself, therefore follows that the lower Court ought to have taken up the disposal of I.A.No.139 of 2023 in A.S.No.11 of 2017 with the final hearing in the appeal.

12. The Hon'ble Supreme Court of India in Union of India v. Ibbrahim Uddin and another reported in 2012 (8) SCC 148 equivalent 2012 SCC Online 528 held that if the

application under Order 41 Rule 27 is disposed of earlier than the appeal, the order under Order 41 Rule 27 can be ignored since it is passed due to non application of judicial mind.

In the above Judgment the relevant portion at Paras 38 to 41 and Para 69 (viii), is extracted hereunder:

38. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh & Ors., AIR 1951 SC 193; and Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors., AIR 1976 SC 1053).

39. In Parsotim Thakur & Ors. v. Lal Mohar Thakur & Ors., AIR 1931 PC 143, it was held:

?"The provisions of S.107 as elucidated by O.41, R.27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal. Under R.27, Cl.(1) (b) it is only where the appellate Court "requires" it (i.e. finds it needful). The legitimate occasion for the exercise of this discretion is not whenever

before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent”, it may well be that the defect may be pointed out by a party, or that a party may move the Court to apply the defect, but the requirement must be the requirement of the court upon its Union Of India vs Ibrahim Uddin & Anr on 17 July, 2012 Indian Kanoon - <http://indiankanoon.org/doc/61939581/> 11 appreciation of evidence as it stands. Wherever the Court adopts this procedure it is bound by R. 27(2) to record its reasons for so doing, and under R.29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case...” (Emphasis added) (See also: Indirajit Pratab Sahi v. Amar Singh, AIR 1928 P.C. 128)

40. In Arjan Singh v. Kartar Singh & Ors. (supra), this Court held:

“.....If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent..... The order allowing the appellant to call the additional evidence is dated 17.8.1942. The appeal was heard on 24.4.1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing the judgment” (Emphasis added).

41. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after

appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored."

(viii) The first appellate court committed a grave error in deciding the application under Order XLI Rule 27 CPC much prior to the hearing of the appeal. Thus, the order allowing the said application is liable to be ignored as the same had been passed in gross violation of the statutory requirement."

13. In view of the ruling of the Supreme Court of India in Union of India Vs. Ibrahim Uddin and another reported in 2012 (8) SCC 148 and duly considering the same since in the present case the lower Court passed the impugned order without taking up the hearing of the appeal, the order impugned is liable to be set aside and the matter has to be remanded to the lower Court for disposal of the petition afresh along with the appeal.

14. For the aforesaid reasons this Court is of the considered opinion that the order dated 11.06.2024 in I.A.No.139 of 2023 has to be set aside and hence CRP is allowed and the order dated 11.06.2024 in i.A.No.139 of 2023 is accordingly set aside, and the matter is remanded to the trial Court to take up disposal of I.A.No.139 of 2023 along with the final hearing of A.S.No.11 of 2017 in accordance with law. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 30.07.2024.

Note: L.R.Copy to be marked
(B/o) *Yvkr*