

T.V. Ashwini and anr. Vs. R. Krishna Kumar and ors.

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Court : Andhra Pradesh

Decided On : Mar-31-2004

Reported in : 2004(3)ALD774

Judge : L. Narasimha Reddy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1

Appeal No. : Rev. CMP No. 7809 of 2004 in CRP No. 2708 of 2001

Appellant : T.V. Ashwini and anr.

Respondent : R. Krishna Kumar and ors.

Advocate for Def. : L. Prabhakar Reddy, Adv. for Respondent No. 1

Advocate for Pet/Ap. : Kavintha Gottipati, Adv.

Disposition : Review allowed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. This Review C.M.P., under Order 47, Rule 1 C.P.C., is filed by the Respondents 1 and 2 in CRP No. 2708 of 2001, seeking review of the order dated 30-1-2002, passed therein.

2. The parties shall be referred to, as arrayed in this Review C.M.P. The relevant facts may briefly be stated as under:

3. Petitioners and respondent No. 2 are the children of the 3rd respondent, who passed away recently. The 2nd respondent filed O.S. No. 327 of 1996 in the Court of I Additional Chief Judge, City Civil Court, Secunderabad, against the petitioners and 3rd respondent, for partition. It was decreed on 12-12-1999 in terms of a compromise. Petitioners filed O.S. No. '40 of 1998 in the same Court to set aside the compromise decree in O.S. No. 327 of 1996. Respondents 4 to 10 were also impleaded in the suit. The trial of the same is in progress.

4. The 1st respondent filed LA. No. 842 of 2000 in O.S. No. 40 of 1998 under Order 1, Rule 10 C.P.C., to get himself impleaded as one of the defendants. He contended that the 3rd respondent transferred interests in one of the items in suit schedule property in his favour, and in that view of the matter, he is a proper and necessary party to the suit. The petitioners, on the other hand, contended that the claim made by the 1st respondent for the property cannot be sustained. According to them, the letter, dated 4-2-1999 which constituted the basis for the claim of the 1st respondent, is forged. The Trial Court dismissed the I.A. through its orders dated 10-4-2001. 1st respondent filed C.R.P. No. 2708 of 2001 against the order in LA. No. 842 of 2000. In its order dated 30-1-2002, this Court took the view that the question as to whether the various proceedings on which 1st respondent relied upon, are genuine or not, can be decided in the trial of the suit and that the 1st respondent deserves to be impleaded. The C.R.P., was accordingly allowed.

5. The petitioners contend that the enquiry and verification undertaken by them subsequent to the order of this Court revealed that proceedings were initiated against the Estate Officer, who is said to have issued letter dated 22-3-1999 in favour of the 1st respondent; Criminal proceedings were initiated against the concerned officials, and till the claim of the petitioners is firmly established, he cannot be permitted to be impleaded. They submit that, had the fact that the concerned administrative authorities initiated proceedings against the Estate Officer, who issued letter dated 22-3-1999, been brought to the notice of this Court, the C.R.P. would not have been allowed at all. They further contend that the

validity of the said proceedings cannot be adjudicated in the suit, since various Government authorities are not parties to it.

6. The learned Counsel for the 1st respondent, on the other hand, submits that this Court took the allegations made by the petitioners as regards the validity of the letter dated 22-3-1999 as well as other proceedings, such as, letter dated 4-2-1999, said to have been addressed by the deceased-3rd respondent to the Estate Officer, and the same ground cannot be permitted to be reagitated in the review. He contends that even if a second view is permissible on the same set of facts, order once passed, cannot be reviewed. Placing reliance upon Order 47, Rule 1 C.P.C., and the decisions rendered thereunder, the learned Counsel submits that no case is made out for reviewing the order. He contends that if the petitioners on the one hand and the 2nd respondent on the other proceed with the suit, the interests of the 1st respondent would be adversely affected.

7. Before proceeding to discuss the matter on merits, the contentions on behalf of the 1st respondent, as regards maintainability of review, need to be dealt with. It hardly needs any emphasis, that an order rendered by a Court can be reviewed, only under limited circumstances specified under Order 47, Rule 1 C.P.C. The purport of the provision of law, the parameters relating to the concept of review and the precedents on the subject is that, under the guise of review, a Court cannot deal with the matter as in an appeal. It is also well established that even if a second view is possible on the same set of facts, an order cannot be reviewed. It is only when it is pleaded and established that an important aspect, having direct bearing on the matter, missed the attention of the Court, not on account of any negligence on the party seeking review, that an application under Order 47, Rule 1 C.P.C., can be maintained. The facts, which missed the attention of the Court, should be such that, if taken into account, would persuade the Court to take a different view.

8. The learned Counsel for the respondents relied upon judgments of the Supreme Court in *Meera Bhanja v. Nirmala Kumari Choudhury*, : AIR 1995 SC455 ; *Parsion Devi v. Sumitri Devi*, 1997 (4) CCC 52 (SC), of Madras High Court in *Managing Director, Hindustan Photo Films Co., Ltd. v. H.B. Vinobha*, AIR 1998 Madras 358

and of this Court in Palakurthy Venkateswarlu v. Noraju Manorama, : 2002(6)ALD716 . Since there is no dispute or controversy as to the principle or proposition involved, it is not necessary to refer to the said judgments, elaborately.

9. This Court relied heavily upon the letter dated 3-4-1999 issued by the Chief Commissioner of Land Administration, in allowing the revision, and the application of the 1st respondent under Order 1, Rule 10 C.P.C. It is true that the petitioners doubted the correctness of the same. This is how, the question was dealt with:

'The revision petitioner is relying upon the proceedings dated 3-4-1999 issued by the Commissioner of Land Administration, Andhra Pradesh, Hyderabad according permission for transfer of leasehold rights in plaint B schedule property in favour of the revision petitioner. According to the revision petitioner, the deceased-4th respondent addressed a letter dated 4-2-1999 to the Estate Officer, Secunderabad intimating that he sold his leasehold rights to the present revision petitioner and requesting the competent authority to transfer the above property in favour of the revision petitioner. In this connection, at the lime of hearing of this revision petition, the learned Counsel for the respondents had shown to the Court a certified copy of the above letter dated 4-2-1999. He pointed out that as per the endorsement in that letter, the said application was received by the officer concerned on 24-2-1999. He contended that the said application was presented in the Office after the death of the 4th respondent and it improbabilises the genuineness of the said letter. The question whether the said letter is genuine or not cannot be considered at this stage.'

At another place, it was observed as under:

'The merits of the case advanced by him fall for consideration and determination only in the suit and not at the stage of Interlocutory Application.'

10. The petitioners specifically state that in the further enquiry made by them; they came to know that action were initiated against the Estate Officer, Secunderabad, who was responsible for bringing about the proceedings dated 3-4-1999. They have placed before this Court the statements recorded by the police during the course of investigation and certain other related records. A perusal of the same

discloses that the Special Chief Secretary and Chief Commissioner of Land Administration has ordered enquiry to ascertain the genuineness of the proceedings, which were relied upon by the 1st respondent, including the proceedings dated 3-4-1999. This Court proceeded on the assumption that the genuinity or otherwise of the proceedings dated 3-4-1999, of the Chief Commissioner of Land Administration, can be decided in the suit. Things would have certainly been different, had this Court been aware of such a vital development.

11. The question whether the proceedings dated 3-4-1999 are genuine or not, is not a matter purely between the parties to the suit. Once it emerges that the author of the said proceedings, namely, the Chief Commissioner of Land Administration, himself doubted the genuinity of the same, it becomes rather impossible for the Trial Court to adjudicate upon it. The reason is that the said authority is not a party to the suit. Recording a finding as to the genuinity of the said proceedings by the Court, in the suit, in the absence of its author, may lead to disturbing consequences. Once an issue is framed in this regard, a finding is bound to be given one way or the other, irrespective of the fact whether the concerned persons are parties to the suit or not.

12. The nature of adjudication, and the material available to the Court, are substantially those in the departmental or administrative proceedings. The findings of the Court on the genuinity of the proceedings dated 3-4-1999 are found to be at variance with those in departmental or administrative proceedings. If the Court records finding that proceedings dated 3-4-1999 are genuine, and in the departmental proceedings it is held to be otherwise, or vice-versa, disastrous consequences would result.

13. This Court was not even informed of the initiation, much less, the progress of the enquiry at the administrative level and departmental level into the very proceedings, when it passed the order under review. Hardly there can be any doubt that, had these facts been brought to the notice of this Court, the 1st respondent would have been permitted to get himself impleaded, only after the cloud on the proceedings relied upon by him is removed. But for assumption that

the genuinity of the proceedings, dated 3-4-1999, can be decided in the suit, the 1st respondent could not have been impleaded as defendant to the suit.

14. It is not as if the 1st respondent would suffer any detriment, if he is required to wait till the proceedings initiated on the departmental side against the order dated 3-4-1999 are finalized. His only fear, that by the time the proceedings be finalized, the petitioners may encumber or create 3rd party rights, as regards the property, can allayed by issuing necessary directions.

15. Under these circumstances, the order dated 30-1-2002 in C.R.P. No. 2708 of 2001 is reviewed and the C.R.P. shall stand dismissed, affirming the order in LA. No. 842 of 2000 in O.S. No. 40 of 1998 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad. It is, however, directed that the petitioners herein shall not create encumbrance or any 3rd party rights in respect of the property, which is the subject-matter of the proceedings dated 3-4-1999, of the Chief Commissioner of Land Administration, for a period of one year from today. It shall also be open to the 1st respondent to take necessary steps to get himself impleaded as and when the correctness or validity of the proceedings dated 3-4-1999 is upheld in the ongoing departmental proceedings. It is further observed that, if the suit is disposed of in the meanwhile, it shall not affect the rights of the 1st respondent in any manner. It is hoped that the concerned administrative authority, which is dealing with the proceedings, shall expedite the disposal of the same.

16. The Review CMP accordingly, is allowed.