

Namburi Chenna Reddy and ors. Vs. Devireddy Kotareddy and ors.

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Court : Andhra Pradesh

Decided On : Aug-23-2005

Reported in : 2006(1)ALD493; 2006(2)ALT369

Judge : L. Narasimha Reddy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13 - Order 17, Rule 3

Appeal No. : CRP No. 1557 of 2005

Appellant : Namburi Chenna Reddy and ors.

Respondent : Devireddy Kotareddy and ors.

Advocate for Def. : A.V.V.S.N. Murthy, Adv.

Advocate for Pet/Ap. : P. Rajasekhar, Adv.

Judgement :

ORDER

L. Narasimha Reddy, J.

1. This revision presents an instance of undue delay on the part of the Court, even to dispose of the I.A. filed under Order 9 Rule 13 CPC, resulting in prejudice to both the parties.

2. The petitioner herein filed O.S. No. 280 of 1986 in the Court of Principal Junior Civil Judge, Kavali, against the respondents herein for perpetual injunction. The trial of the suit commenced sometime in the year 1981. PW.1 was examined as a witness. PW.2 was examined in chief and his cross-examination was due on 31-10-1991. A representation was made on that day on behalf of the respondents that their Counsel went to the District Head Quarters to conduct a Sessions Case and they submitted an application seeking adjournment. The trial Court passed an order on that day itself rejecting the request, setting the respondents ex-parte and decreed the suit as prayed for.

3. Soon thereafter, the respondents filed I.A.No. 11 of 1992, under Order 9 Rule 13 CPC, to set aside the ex-parte decree, dated 3-10-1991. The trial Court took nine years to reject their application on the ground that it is not maintainable, since the order, dated 3-10-1991, attracts Order 17 Rule 3 CPC.

4. The respondents filed CMA Nos. 9 of 2002 in the Court of Senior Civil Judge, Kavali. Three years thereafter, the lower appellate Court allowed the CMA, and consequently, the I.A. allowed and thereby the suit came to be restored. The petitioners challenge the same.

5. Sri Raja Shekar, learned Counsel for the petitioners, submits that the grounds pleaded while seeking adjournment on 3-10-1991 were not tenable, and that the trial Court was left with no alternative except to decree the suit. He further contends that though the respondents were set ex-parte, it cannot be said that the decree is ex-parte in nature, and that, the matter is covered by Order 17 Rule 3 CPC. He states that restoration of the suit at this length of time, would cause great prejudice to the petitioners.

6. Sri A.V.V.S.N. Murthy, learned Counsel for the respondents, on the other hand, submits that once the trial Court had set the respondents ex-parte and passed a decree soon thereafter, it partakes the character of a ex-parte decree and the provisions of Order 17 Rule 3 do not get attracted. He further contends that even if the trial Court was not satisfied about the grounds on which the adjournments was sought, it ought to have proceeded with the further evidence of the petitioners or adjourned the matter for recording the evidence on behalf of the respondents and

there was no justification for it, to pass an ex-parte decree. It is also his submission that even in the cases where the defendant is set ex-parte, the trial Court is under obligation to discuss the matter on merits and such an exercise was not undertaken.

7. The record does not disclose that the respondents were persistently absent or that they did not co-operate with the trial Court in proceeding with the suit. On 3-10-1991, not only a request was made on the ground that the Counsel had been attending a Sessions Case, but also an application for adjournment was filed. Through a judgment, which comprises of five sentences, of four typed lines, the trial Court had (a) rejected the request for adjourning the time to cross-examine PW-2, (b) dismissed the application for adjournment, (c) set the defendants ex-parte, (d) proceeded to hear the matter, and (e) decreed the suit. The only portion, which can be treated as the discussion of the matter in relation to suit claim reads as :

Perused the evidence of PWs.1 and 2 and Exs.10 and 12. Suit claim proved. Hence, the suit is decreed as prayed for.

8. In its anxiety, the trial Court has proceeded to take into account the evidence of P.W.2, who, admittedly he was not cross-examined. Time and again, the Hon'ble Supreme Court held that even where the defendant is absent or set ex-parte, the trial Court is not relieved on its duty to examine the merits of the matter and to render a reasoned judgment.

9. Be that as it may, even though the respondents filed an application under Order 9 Rule 13 CPC, the trial Court rejected the application after nine years, by observing that the matter comes under Order 17 Rule 3 CPC. It failed to take note of the fact that setting the defendant's ex-parte and invocation of Order 17 do not go together. The only paragraph in which the merits of the matter were discussed, hardly conveys any meaning. Faced with the situation, the respondents filed an appeal. The lower appellate Court discussed the matter with reference to the relevant provisions and recorded clear findings. Even, as regards, the ground of absence of the Advocate, the lower appellate Court had taken a correct and practical view and this Court does not find any basis to interfere with the order

under revision.

10. It is true that the petitioners are put to great hardship on account of setting aside of a decree obtained by them 14 years ago and requiring them to prosecute a suit filed about 2 decades back. Had the delay been on the part of the respondents, this Court, certainly, would have interfered with the order under revision. As observed earlier, the delay was squarely attributable to the trial Court and not to the parties. The trial Court ought to have been careful and diligent in dealing with the matters of this nature. Inasmuch as, the decree of perpetual injunction was operating all through against the respondents, it is directed that irrespective of the fact whether an order of temporary injunction was existing in favour of the petitioners, there shall be temporary injunction against the respondents till the disposal of the suit.

11. The civil revision petition is accordingly, disposed of with the above observation. No order as to costs.

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