

SUPREME COURT OF INDIA

G.Shashikala

Vs.

G.Kalawati Bai

C.A.No.3969-3970 of 2019

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

16.04.2019

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C)No.30911-30912 of 2018

1. Leave granted.
2. These appeals are filed against a common judgment and order dated 26.09.2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in CCCA No.40 of 2002 and TRCCA No.168 of 2003 whereby the High Court dismissed both the appeals filed by the appellants herein.
3. A few facts need mention hereinbelow for the disposal of these appeals, which involve a short point.
4. The appellants herein are the legal representatives of the original defendants and the respondents are the plaintiffs of the two suits being O.S. No. 1402 of 1992 and O.S. No.432 of 1993.
5. One suit was for declaration of title and delivery of possession of a major portion of the suit house and other was for grant of perpetual injunction in relation to the suit house.
6. The Trial Court by judgment/decreed dated 21.01.2002 decreed the title suit and passed a decree for possession but dismissed the suit for grant of perpetual injunction.
7. This led to filing of two first appeals in the High Court of A.P. During pendency of the appeals, the appellants (defendants) filed an application (IA No.5/2011) under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) and the respondents (plaintiffs) also filed an application (IA No.428/2011) under Order 41 Rule 27 of the Code.

8. By these two applications, parties prayed permission from the Appellate Court to file additional evidence (documents) in support of their case.

9. By order dated 11.07.2016, the High Court allowed the application filed by the respondents (IA No. 428/2011) and also admitted the documents in evidence and directed that the impact of the additional evidence admitted in evidence will be examined while hearing the main appeal. So far as IA No.5/2011 filed by the appellants is concerned, no order was passed.

10. By impugned order, both the appeals were dismissed by affirming the judgment/decree of the Trial Court, which has given rise to filing of the two appeals in this Court after obtaining the special leave to appeal.

11. So the short question, which arises for consideration in these appeals, is whether the High Court was justified in dismissing the appeals.

12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow these appeals and while setting aside the impugned order, remand the case to the High Court for hearing the appeals afresh on merits in accordance with law.

13. In our considered opinion, the need to remand the case to the High Court has occasioned for the reason that the High Court committed jurisdictional error while deciding the application filed by the respondents under Order 41 Rule 27 of the Code (428/2011) separately.

14. The question as to how the application filed under Order 41 Rule 27 of the Code in the appeal should be decided by the Appellate Court remains no more res integra and stands decided by the three decisions of this Court in *North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das(Dead) by L.Rs¹*, (See paras 13-17), *Shalimar Chemical Works Limited vs. Surendra Oil & Dal Mills(Refineries) & Ors²*, (See para 16) and *Corporation of Madras & Anr. vs. M. Parthasarathy & Ors³*, (See paras 11-15).

15. Unfortunately, the High Court while deciding the application (428/2011) filed by the respondents under Order 41 Rule 27 of the Code did not notice the law laid down in the aforementioned three decisions and proceeded to decide the application/appeals and thus committed a jurisdictional error.

16. In view of the foregoing discussion, we are unable to concur with the approach, reasoning and the conclusion arrived at by the High Court in the impugned order calling for interference by this Court.

17. The appeals, therefore, deserve to be allowed and are accordingly allowed. The interim order dated 11.07.2016 by which the application under Order 41 Rule 27 of the Code was allowed and the final order impugned herein are set aside.

18. The case is remanded to the High Court for deciding the two first appeals, out of which these appeals arise, afresh including the two applications filed by the parties to the appeals under Order 41 Rule 27 of the Code on their respective merits keeping in view the law laid down in the above-mentioned three decisions insofar as it deals with disposal of the application of Order 41 Rule 27 of the Code and decide the appeals on merits in accordance with law uninfluenced by any observations made in the impugned order and in this order.

Judgment Referred.

¹(2008) 8 SCC 0511

²(2010) 8 SCC 0423

³(2018) 9 SCC 0445