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Andhra Pradesh High Court

Case No: C.R.P. No. 664 of 2002

Moora Chinna Narasimhulu		APPELLANT
	Vs	
Gedda Kadirappa and Others		RESPONDENT

Date of Decision: Aug. 7, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (2002) 5 ALT 720 : (2002) 3 APLJ 102

Hon'ble Judges: G. Bikshapathy, J

Bench: Single Bench

Advocate: S.V. Bhatt, for the Appellant; M. Venkataramana Reddy, for the 1st Respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G. Bikshapathy, J.
This Revision is preferred against the orders passed by the learned Senior Civil Judge, Punganur in I.A.No. 126 of 2001 in A.S.No. 117 of 1999 refusing to receive the documents.

2. The petitioner herein is one of the appellants in A.S.No. 117 of 1999. The respondent herein filed a suit seeking declaration and permanent injunction against the defendant. The said suit was decreed against which an appeal has been preferred by the defendant. During the appellate stage, the defendant died and his legal representatives were brought on record. The 4th appellant, one of the legal representatives, filed I.A.No. 126 of 2001 seeking permission to receive certain documents. The said application, filed under Order XLI Rule 27 C.P.C and it was dismissed by the lower appellate Court by an order dated

15-2-2002 against which the present revision has been filed.

3. Learned counsel for the revision petitioner submits that the order of the Court below is wholly erroneous and contrary to law. In fact, the documents which were sought to be pressed into service at the appellate stage were already admitted during the interlocutory proceedings before the Court below, but, however, the same were not marked in the main suit. Therefore, receiving those documents at the appellate stage will not, in any way, prejudice the case of the respondents and thus he submits that the order of the Court below is liable to be set aside and that the lower appellate Court may be directed to receive the documents.

4. Learned counsel for the respondents, on the other hand, submits that the order of the Court below cannot be said to be illegal or contrary to law as it conforms to the provisions of Order XLI Rule 27 C.P.C. It is further submitted that the father of the revision petitioner did not get those documents marked during the trial and, therefore, the petitioner cannot be allowed to get those documents marked at the appellate stage.

5. I have considered the respective contentions. The application is filed under Order XLI Rule 27 C.P.C. seeking production of additional evidence at the appellate stage. A party has no right to adduce additional evidence at the appellate stage unless he fulfils the conditions laid down in Sub-clauses (a), (aa) and (b) of Rule 27 of Order XLI C.P.C. In the instant case, the father of the petitioner was alive when the trial took place and the documents which are now sought to be inducted were already admitted in the interlocutory proceedings though they were not marked in the main suit. But, nonetheless, they are not alien documents sought to be pressed into service for the first time. In fact, it is stated before this Court that they are notices and reply that were exchanged between the parties and that their induction at the appellate stage would not, in any way, harm either parties.

6. Keeping in view the peculiar circumstances in the instant case and the fact that those documents were already got marked during the interlocutory proceedings, this Court feels that the lower appellate Court ought to have allowed the application and received the documents for proper appreciation of the appeal. In the circumstances, I am inclined to set aside the order impugned herein and accordingly the same is set aside and the lower appellate Court is directed to receive the documents. But, however, the parties shall not be permitted to adduce any oral evidence. The lower appellate Court shall hear the parties and dispose of the appeal in accordance with law within a period of three months from the date of receipt of a copy of this order.

7. The Revision is allowed accordingly at the stage of admission.