(2014) 10 AP CK 0027

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 2964 of 2014

Bobbala Ramchandra Reddy		APPELLANT
	Vs	
Dasoju Rama Linga Chary		RESPONDENT

Date of Decision: Oct. 27, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 115, 152

Citation: (2015) 1 ALD 474 : (2015) 3 ALT 78

Hon'ble Judges: Akula Venkata Sesha Sai, J

Bench: Single Bench

Advocate: Srinivas Polavarapu, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

A.V. Sesha Sai, J.
This revision petition filed under Section 115 of the Code of Civil Procedure (CPC), challenges the order dated 6.03.3014 passed by the Court of the I Additional District Judge, Nalgonda, dismissing I.A. No. 575 of 2008 in A.S. No. 79 of 1996 filed by the petitioner under Section 152 of C.P.C.

2. Heard Sri Srinivas Polavarapu, learned counsel for the petitioner, Sri Laxman Bachu, learned counsel for respondents 2, 4 and 5 and Ms. Srilatha Palakurthi, learned counsel for the 3rd respondent, apart from perusing the material available on record.

3. The facts and circumstances leading to filing of the present revision petition are as under:

One Mr. Bobbala Bugga Reddy S/o. Bobbala Bal Reddy instituted the suit O.S. No. 159 of 1993 on the file of the Court of the Junior Civil Judge, Nalgonda against respondents 1

and 2 herein, arraying them as defendants 1 and 2 respectively, for perpetual injunction. The learned Junior Civil Judge, Nalgonda dismissed the said suit by way of judgment and decree dated 16.10.1996. Aggrieved by the said judgment and decree, Sri Bobbala Bugga Reddy preferred A.S. No. 79 of 1996 on the file of the Court of the I Additional District Judge, Nalgonda. Pending the said Appeal, Bobbala Bugga Reddy passed away and with the result, the 2nd plaintiff, viz., Bobbala Ayyapu Reddy, who is the 4th respondent herein, came on record. The other legal representatives of the deceased Bobbala Bugga Reddy were also impleaded as respondents 3 to 6 in the said A.S. No. 79 of 1996. Eventually the learned I Additional District Judge, Nalgonda allowed the said appeal by way of judgment and decree dated 17.10.2000 thereby decreeing the suit as prayed for. Subsequently, the petitioner, viz., Bobbala Ramchandra Reddy, who is none other than the son of the deceased Bobbala Bugga Reddy (plaintiff), filed I.A. No. 575 of 2008 in A.S. No. 79 of 1996 under Section 152 of C.P.C., seeking amendment of paragraph No. 2 of the decree dated 17.10.2000 passed in A.S. No. 79 of 1996. The learned I Additional District Judge, Nalgonda, by virtue of an order dated 6.03.2014 dismissed the said I.A. No. 575 of 2008 holding that the petitioner should file either Second Appeal or review instead of the present application. The said order passed by the I Additional District Judge, Nalgonda is under challenge in the present revision petition.

4. Reiterating the grounds of revision, it is contended by the learned counsel for the petitioner that the order impugned in the present revision petition is erroneous, contrary to law and is vitiated by the material irregularities and illegalities. It is further contended by the learned counsel that the impugned order is opposed to the very spirit and object of the provisions of Section 152 of C.P.C. It is further contended that the finding of the learned I Additional District Judge that the petitioner herein should file either Second Appeal or review, is patently erroneous and not in consonance with the provisions of Section 152 of C.P.C. It is nextly contended by the learned counsel that since the appellate Court decreed the suit as prayed for, necessarily it has to be construed that the Court below granted injunction only against the defendants in O.S. No. 159 of 1993, but not against respondents 3 to 6 in A.S. No. 79 of 1996, who were impleaded as formal parties in the appeal.

5. Per contra, it is contended by the learned counsel for the respondents 4, 6 and 7 that the order passed by the Court below neither suffer from any material irregularity nor any jurisdictional error nor any fundamental infirmity nor perverse, as such, the present revision is liable to be dismissed. It is further strenuously contended by the learned counsel that as rightly indicated by the Court below, the petitioner herein, if he feels aggrieved, he has to necessarily file a Second Appeal against the decree passed by the lower Court or a review under Order 47 Rule 1 of C.P.C. The learned counsel for the 5th respondent is totally in support of the counsel for the petitioner.

6. In the above background, now the issues, which this Court is called upon to answer, are whether the order under challenge is sustainable and tenable and whether the same is in consonance with the provisions of Section 152 of C.P.C.

7. The material available before this Court manifestly discloses that late Sri Bobbala Bugga Reddy instituted O.S. No. 159 of 1993, seeking injunction against two defendants, viz., 1) Dasoju Ramalingachary (1st respondent herein); and 2) Sri Pragnapuram Lingayya (2nd respondent herein). The said suit ended in dismissal on 16.10.1996. Thereafter, Bobbala Bugga Reddy preferred A.S. No. 79 of 1996. There is no dispute with regard to the fact that pending the said appeal, the said Bobbala Bugga Reddy passed away and the 4th respondent herein came on record as appellant No. 2 in the capacity of legal representative of the deceased Bobbala Bugga Reddy. There is also no dispute with regard to the fact that the other legal representatives of deceased Bobbala Bugga Reddy were impleaded as respondents 3 to 6 in A.S. No. 79 of 1996 obviously as formal parties. The learned I Additional District Judge, Nalgonda, allowed the appeal vide judgment dated 17.10.2000. Paragraph 18 of the said judgment reads as under:

"On the other hand, no document has been filed by the respondents to constitute and to claim an easement right that he has been using the disputed road in question for more than 20 years. In the absence of the above said proof, it cannot be said that the first respondent has been using the road or passage openly and uninterruptedly for the last 20 years to claim easement right.

Hence, the first defendant/first respondent failed to prove that he had acquitted easementary right of way by prescription by using disputed passage for more than 20 years.

In view of the foregoing discussions and conclusions the judgment and decree of the lower Court in O.S. No. 159/93 dated 16th October, 1996 is set aside and the said suit is decreed without costs."

8. A perusal of the above mentioned operative portion of the judgment manifestly discloses that the learned District Judge, while setting aside the judgment and decree passed in O.S. No. 159 of 1993 dated 16.10.1996, decreed the suit. Therefore it can safely be concluded that the lower Appellate Court decreed the suit for injunction as against the defendants in O.S. No. 159 of 1993, but not against the respondents 3 to 6 in A.S. No. 79 of 1996. But the decree drafted pursuant to the judgment rendered by the lower appellate Court reads as under:

"1. The appeal of the appellant be and is hereby allowed and the judgment and decree passed by the District Munsiff, Nalgonda is set aside.

2. The suit of the plaintiff (appellant herein) be and is hereby decreed the defendants (Respondents) herein, their agents, servants, associates relatives and supporters etc., be and are hereby restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit land.

3. The suit is decreed without costs."

9. Paragraph two of the said decree in the Appeal, in the considered opinion of this Court, is not in consonance with the judgment rendered by the lower Appellate Court since the lower Appellate Court decreed the suit as prayed for and respondents 3 to 6 in A.S. No. 79 of 1996 were treated as proforma parties to the appeal, who are the legal representatives of the 1st plaintiff/appellant No. 1, as such the decree should have been only against the defendants in O.S. No. 159 of 1993. The 4th respondent in A.S. No. 79 of 1996 correctly moved the application in I.A. No. 575 of 2008, seeking amendment of paragraph No. 2 of the decree in A.S. No. 79 of 1996 but the I Additional District Judge, Nalgonda erroneously dismissed the said application holding that the remedy for the petitioner is either Second Appeal or review. The said finding in the opinion of this Court is neither sustainable nor tenable.

10. Section 152 of C.P.C., empowers and authorises the Courts to correct clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission made at any time either of its own motion or on the application by any of the parties.

11. In the instant case, the defect in paragraph 2 of the decree certainly falls under the said contingencies, which can be corrected under the said provision of law and since the decree of the lower appellate Court is not in consonance with the judgment rendered by it, the same is required to be corrected and rectified in the light of the provisions of Section 152 of C.P.C.

12. For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order dated 6.03.2014 passed by the Court of the I Additional District Judge, Nalgonda in I.A. No. 575 of 2008 in A.S. No. 79 of 1996 and consequently the said I.A. stands allowed and the lower appellate Court shall issue amended copy of decree. No order as to costs. As a sequel, the miscellaneous petitions, if any, shall stand closed.