



**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARA-
VATI
(Special Original Jurisdiction)**

[3366
]

MONDAY ,THE TWENTY SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B SYAMSUNDER

SECOND APPEAL NO: 38 OF 2021

Between:

Shaik Khader Mohiddin

...APPELLANT(S)

AND

TANJORE ASHIF AHAMMAD AND OTHERS

...RESPONDENT(S)

The Court made the following:

I have heard learned counsel for the appellant Mr.S.V.Muni Reddy, as well as learned counsel Mr.M.Sohel represented on behalf of Mr.Kaleemulla S, learned counsel for respondent Nos.16 & 17.

2. This Second Appeal is preferred against the Decree and Judgment in A.S.No.47 of 2008 on the file of V Additional District Judge, Rayachoty of YSR Kadapa District and remanding the matter to the Trial Court, with a direction to the Trial Court to appoint an Advocate Commissioner for localization of Suit Schedule Property with the aid of Mandal Surveyor with reference to the title deeds of both the parties and also other link documents and directed to dispose of the matter within three to five months.

3. When this Court requested the learned counsel for the appellant to clarify against the remand order of the First Appellate Court whether

Civil Miscellaneous Appeal lies or Second Appeal lies, the learned counsel would fairly submit that against the remand order Civil Miscellaneous Appeal alone lies. The learned counsel for the appellant fairly submitted the ratio laid down by the Hon'ble Single Judge of this Court in **K.Hanumantha Reddy Vs.Kuruva Potharaju**¹, wherein it is held that against the order of remand, Civil Miscellaneous Appeal alone would lie but not Second Appeal. The learned counsel for the appellant requested to pass necessary orders as per ratio laid down in the above referred decision.

4. The learned counsel representing the respondents would submit that they have no objection for converting Second Appeal as Civil Miscellaneous Appeal, in view of the ratio laid down in the decision relied on by the learned counsel for the appellant.

5. Order XLIII of Code of Civil Procedure deals with appeals from Orders. Order XLIII Rule 1(U) CPC specifies that an appeal shall lie from the following orders under the provisions of Section 104 CPC, viz., an order under Rule 23 (or 23-A) of Order XLI CPC, remanding a case, where an appeal would lie from the decree by an Appellate Court.

6. In the light of Order XLI Rule 23(A) of CPC against an order of remand, Civil Miscellaneous Appeal alone would lie under Order XLIII Rule 1 of C.P.C. The same view expressed by Hon'ble Single Judge of this Court in the decision relied on by the learned counsel for the appellant.

¹ 2005 (4) ALD 179

In view of the same, giving liberty to the appellant to convert the Second Appeal into a Civil Miscellaneous Appeal. Registry is directed to register this appeal as Civil Miscellaneous Appeal, if it is otherwise in order. The appellant is entitled for refund of Court fee paid on the memorandum of the Second Appeal. It is needless to say that the Court Fee payable on the Civil Miscellaneous Appeal is to be paid in accordance with law.

7. The Second Appeal is accordingly disposed of. No order as to costs.

Consequently, miscellaneous petitions, if any, shall stand closed. The interim stay granted if any, shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date: 26.02.2024

Note: Issue C.C by 27.02.2024

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THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

SECOND APPEAL NO. 38 OF 2021

Date: 26.02.2024
LSP